

Gary Bass

Stay the Hand of Vengeance- The
Politics of War Crimes Tribunals
(Paperback Edition, 2002)

Pages: 206-275, 311 - 330

The Hague

HE IS NOT A MAN of great importance. He is neither a president nor a general, nor, by all accounts, a person with great political aspirations or indeed any particular ambition. Dusan Tadic is short, with small eyes, visibly nervous, and subdued. On May 7, 1996, Tadic had the dubious distinction of becoming the first accused war criminal in the gleaming new dock at the UN international criminal tribunal for the former Yugoslavia (ICTY), in The Hague. He is surrounded by four UN guards, in baby-blue uniforms; they do not look very tough, but neither does he. Still, if the charges against him are true, he is at least an unusually cruel person: he is accused of killing, mutilating, and beating Bosnian Muslim detainees in 1992 at the Bosnian Serb-run concentration camps of Omarska and Keraterm. There were rape charges, too, but they were dropped because a witness was afraid to testify.

Tadic doesn't take many notes, and is often visibly bored as the trial drags on. When an expert witness gives a history lecture that starts in the fourth century, Tadic's earphones are off by the 1910s. He has a vain way of brushing his hair back with thick fingers. But there are subtle signs of strain. On those rare moments when he glances at the gallery to see the press and international dignitaries and dissolute Dutch schoolchildren on a grim field trip, all these people here to watch him in the dock, he quickly averts his gaze. They stare at him through the bulletproof glass that encloses the courtroom; he stares away fixedly. Sometimes his eyelids flutter, in erratic twitchy blinks, and he rubs his eyes and puffs out his cheeks as if trying to compose himself.

The tribunal, sorely in need of good publicity, has flacked Tadic's trial as the opening of the first international war crimes trial since Nuremberg and Tokyo. The Nuremberg comparison is inevitable, but it is not a flattering one. Göring, Ribbentrop, and Jodl were the most powerful surviving men in Nazi Germany; Tadic is only a savage pawn in the Bosnian Serb forces. The Nazis stood their trial soon after the war ended; Tadic went on trial more than three years after the establishment of the tribunal in 1993. The leading Allied staff at Nuremberg were at the rank of attorney general or Supreme Court justice; the staff here, with perhaps

two exceptions, are at best middle management. The Nazis were apprehended by victorious Allied armies at the end of the Allied crusade to liberate Europe; Tadic is in custody only because he had the bad luck to get arrested in 1994 by German police in Munich. As Tadic stood his trial, all of the more serious indicted figures—Radovan Karadzic, Ratko Mladic, and fifty-four more—were at large, as Western leaders refused to order the tens of thousands of NATO troops policing Bosnia's peace to arrest them.

Throughout the lands that had been Tito's Yugoslavia, indicted war criminals were in positions of power and comfort, intimidating their former victims with impunity. And never mind about Slobodan Milosevic or Franjo Tudjman, who had so far escaped indictment. (Milosevic was finally indicted in 1999; Tudjman was still publicly unindicted when he died in December 1999.) Historical comparisons only drove home how tokenistic the event was. As an official in the prosecutor's office had said, "The idea that because some thug who was a café owner has been indicted, that justice has been done—nothing could be further from the truth."

It was fitting that the tribunal's first trial was a token gesture. After all, the establishment of the Hague tribunal was an act of tokenism by the world community, which was largely unwilling to intervene in ex-Yugoslavia but did not mind creating an institution that would give the *appearance* of moral concern. The world would prosecute the crimes that it would not prevent. The tribunal was built to flounder.

At first, it did not disappoint. It staggered from one crisis to another: lack of funding; lack of intelligence cooperation from the great powers; lack of staff; threats of amnesties; inability to do investigations; inability to deter war criminals as the wars raged on in Bosnia; and, after the 1995 Dayton accords brought peace and sixty thousand NATO soldiers to Bosnia, a refusal by NATO to arrest the suspects indicted by the tribunal.

Above all, Western war crimes policy in ex-Yugoslavia has been driven by the desire to protect Western soldiers, not Bosnian civilians. Leaders like Bill Clinton and John Major, so solicitous of their own troops, showed an extraordinary ability to shrug off Bosnia's destruction. There were moments when Western public opinion seemed temporarily engaged, horrified by the images of concentration camps like Omarska in 1992, or by reports of mass rape, or by the televised carnage of both Sarajevo market massacres. Some influential constituencies did their best to push intervention, including some feminists (shocked by the use of rape as a weapon of ethnic war), many ethnic and religious leaders, and human

rights activists. But for the most part, public opinion in the major democracies was not outraged enough at the slaughter in Bosnia to apply the kind of overwhelming pressure that pushed liberal governments after World War I and World War II to seek vengeance for crimes against their own citizens.

Without that kind of outrage, the tribunal could merely point out blame. International human rights groups and the press, often the tribunal's best advocates, nudged the process along—a crucial role, but no substitute for state power. The best hope was a handful of angry and legalistic senior Western officials, foremost among them Madeleine Albright, America's UN ambassador and later secretary of state, and Robin Cook, British foreign secretary under Tony Blair. Under their pressure, NATO in July 1997 started making a number of arrest raids, mostly of mid-level war crimes suspects. Protecting NATO soldiers remains the top priority—whether they were British and French UN peacekeepers, members of NATO's force in Bosnia after Dayton, or NATO pilots bombing Serb targets from a lofty altitude in the Kosovo war. Even NATO's arrests in Bosnia have been scrupulously designed to avoid Western casualties: in total, one British soldier has been wounded in such raids so far. With a new and forceful NATO mission in Kosovo, and with Milosevic finally indicted and Tudjman dead, the prospects seem brighter. Still, eight years after the discovery of concentration camps in Bosnia, and five years after genocide indictments, Karadzic and Mladic remain at large. Even if they are finally caught, the overall story of The Hague will be largely a dispiriting one.

CREATING THE TRIBUNAL

Ustashas and Chetniks

In 1991, disintegrating Yugoslavia was a country that had failed to come to terms with its own brutal past. During World War II, the fascist Independent State of Croatia (NNDH) committed unspeakable atrocities against Serbs and Jews. This Nazi quisling state, led by Ante Pavelic, launched a locally unprecedented wave of ethnic slaughter in 1941.¹ Imitating their Nazi allies, the Ustashas—as the Croatian fascists were known—set up concentration camps for their campaign of ethnic killing, including the notorious Jasenovac camp.²

The Ustasha state was finally destroyed in May 1945, just after Nazi Germany surrendered. But the memories of the Ustasha slaughter locked Serbs and Croats in mutual suspicion. For Serbs, the terrors of Jasenovac were fresh. Some of the fiercest opposition to the Ustasha regime had come from the Serb monarchist Chetniks, led by Draza Mihailovic, which were increasingly chauvinist in their call for Serb rights. Many Croats feared that the Chetniks would take revenge for the Ustasha atrocities.³ In Bosnia, while Muslims fought on all sides, some Muslims had backed the ruling Ustasha, and their atrocities prompted Chetnik reprisals in 1942 and 1943.⁴

Tito's communist regime swept all of this grim history under the rug.⁵ His Partisans, unlike Mihailovic's Chetniks, had preferred to make multi-ethnic appeals to all Yugoslavs to resist fascism.⁶ After the Ustasha state fell, Tito's victorious Partisans executed at least 20,000 and perhaps 40,000 people who had already surrendered, mostly Croats.⁷ Tito (born Josip Broz) preferred to execute Ustasha war criminals on the spot, fearing that the spectacle of war crimes trials would only ignite anti-Croat rage among Serbs.⁸ The Yugoslav communists presented all of Yugoslavia's nationalities as equal: no one nation was to be singled out for the wartime massacres or for collaborating with the Nazis, even though this flew in the face of facts.⁹ Chetniks and Ustashas were put on the same moral plane.¹⁰ In 1946, Tito turned on Mihailovic, staging a show trial for the Chetnik leader, whose forces had committed atrocities against Muslims in Sandzak and eastern Bosnia.¹¹

The memories lingered. In the late 1980s and early 1990s, as Tito's Yugoslavia splintered, the history of the Ustasha era made easy ammunition for nationalists. Milosevic, rising to power in Serbia, whipped up ethnic hatred with speeches about the battle of Kosovo Polje in 1389, but he could more credibly scare Serbs by reminding them of the Ustashas. Franjo Tudjman, Croatia's nationalist president, was known for trying to downplay the number of deaths at Jasenovac, and revived the old fascist checkerboard *sahovnica* shield as the symbol of Croatia.¹² Nationalists in Serbia were quick to equate Tudjman's Croatia with Pavelic's.¹³ Especially in the Krajina—a part of Croatia with a substantial Serb population, which would prove the flashpoint for the wars of Yugoslavia's disintegration—it was all too easy for Serb nationalists to argue that an independent Croatia would once again prove genocidal toward Serbs, that 1991 would be a replay of 1941.¹⁴ It was not until 1999 that Dinko Sakic, Jasenovac's commandant, hiding out in Argentina, would be tried and convicted in Croatia.

From the Gulf to the Balkans

As Yugoslavia fell apart in 1991, the question of war criminals was fresh in Western minds, too, because of the Gulf War. President George Bush and Margaret Thatcher, the British prime minister, both called for a special UN tribunal for Iraqi war criminals.¹⁵ In October 1990, Bush, with the image of Iraqi despot Saddam Hussein as Hitler in mind, had twice threatened Saddam with another Nuremberg.¹⁶

Bush's determination faded during the course of the crisis and war, but the idea lingered. As Milosevic stoked Serb nationalism, violence spread throughout the Balkans. First came Serbia's 1991 attacks on Slovenia and Croatia as they seceded from Yugoslavia—the latter war including the shelling of Dubrovnik and the sack of Vukovar, the first major crimes of these wars.¹⁷ This was followed by the Serb onslaught in Bosnia, with devastating “ethnic cleansing” of Bosnia's Muslims and Croats. Serb paramilitary groups and the Bosnian Serb Army imprisoned and murdered local Bosnian leaders, and drove non-Serbs out of their villages, with widespread murder and rape. Western governments had a good sense of the brutal violence against civilians, and of the resulting flow of refugees: 1.1 million by the middle of July 1992. By the time the war ended in 1995, some 200,000 Bosnians had been killed.

Early in the war, Bush made it clear how low Bosnia ranked: “I don't think anybody suggests that if there is a hiccup here or there or a conflict here or there that the United States is going to send troops.”¹⁸ What movement there was would come from pressure from public opinion, led by the press and human rights activists. In July 1992, Human Rights Watch, a prominent group in an international human rights movement that had come of age since Nuremberg, called for an international tribunal to punish the perpetrators of war crimes and genocide.¹⁹ On July 19, *Newsday's* Roy Gutman published the first article about Bosnian Serb-run concentration camps, giving the first mention of names that would become notorious: Omarska, Keraterm, Trnopolje, and Manjaca. Bosnian Serb leader Radovan Karadzic denied that his forces were operating concentration camps. On August 6, Penny Marshall of ITN took Karadzic up on his rash offer to let journalists visit Omarska, and beamed chilling pictures around the world of emaciated Bosnian prisoners behind barbed wire.²⁰ “It looked like the Holocaust,” says a senior Bush administration official. “Nobody pretended not to know.”

It was only after such images that the UN Security Council took the first tentative step toward creating a tribunal. On October 6, while the

killing continued apace in Bosnia, the Security Council unanimously voted to establish a “commission of experts” to gather evidence of war crimes in the former Yugoslavia.²¹ Although France and Britain were not bold enough to vote against the resolution, they from the first saw the issue of war criminals as a potential impediment to making peace in ex-Yugoslavia, binding the hands of policymakers who might have to cut deals with criminal leaders. The UN bureaucracy in the office of legal affairs, and in particular Ralph Zacklin, a Briton, was also obstructionist, according to commission and tribunal staffers.

The commission was set up to go slow, stuffed with academic “old fogies,” as one commissioner put it. The chair, Frits Kalshoven, was an elderly retired law professor at Leiden, in Holland, who admitted he did not know why he had been picked. He was the only full-time member of the commission, which met infrequently and lacked the staff to carry out investigations. One commission member complained that the body was “a low-budget scapegoat.” Kalshoven, as *Newsday's* Gutman reported, was told by “authoritative persons” at the UN not to investigate Milosevic or Karadzic.²²

Cherif Bassiouni, an Egyptian-American law professor at DePaul University who was on the commission, described Kalshoven as an “indoor scholar,” and started pushing hard to make something of the commission. As time went on, Bassiouni—a human rights true believer—accumulated an impressive list of grudges against the UN bureaucracy, blaming France and Britain, with particular scorn for Zacklin as the instrument of obstructionism. Bassiouni raised \$1.4 million from the MacArthur and Soros foundations (the latter led by a sympathetic Aryeh Neier), dwarfing the UN budget of \$900,000. He stockpiled 65,000 pages of documentation, 300 hours of videotape, and a CD-ROM database. The commission had reports of 900 prison camps, about 90 paramilitary groups (mostly Serb, with ties alleged to the Yugoslav National Army and Serbia's Ministry of the Interior), 1,600 reports of rape, and 150 mass graves.

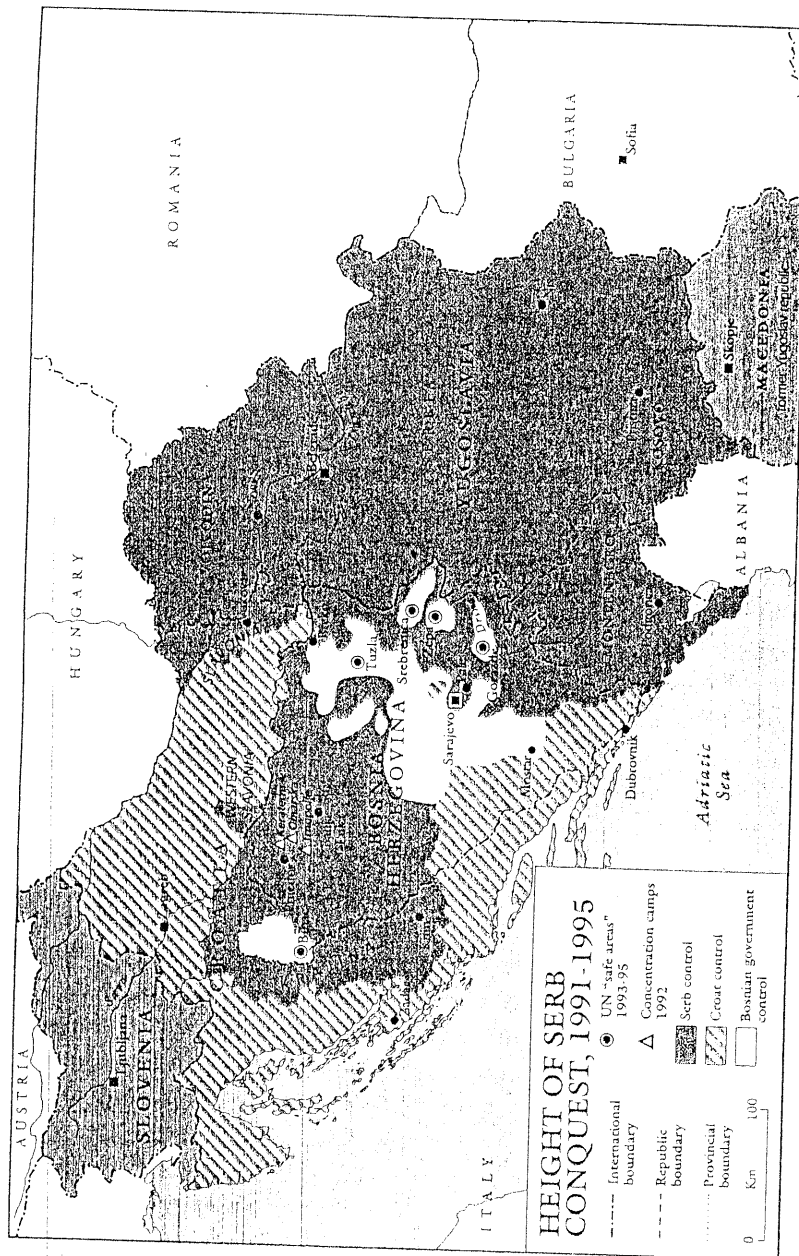
“It's never blatant,” Bassiouni said of UN and European obstructionism, “unless you know how the system works.” France, he says, turned over almost no evidence other than published reports to the Security Council. According to Bassiouni, when Holland offered \$300,000 for travel expenses in May 1993, it took seven months for the UN to accept the money, after Bassiouni got senior Dutch officials to complain to UN officials.

In August 1993, Kalshoven resigned, leaving the commission officially in Bassiouni's hands. By then, even Kalshoven was publicly complaining about British and French foot-dragging. Britain had not given either money or manpower, he said. When Kalshoven asked Britain to provide combat engineers for a mass grave excavation at Ovchara, outside Vukovar, Britain never bothered to respond. "Britain hasn't done anything for us—nothing at all," Kalshoven complained. "At a practical level we haven't received any help in particular from France and the U.K.," he said in December 1993. "If they didn't want us to participate actively, they shouldn't have voted for us."²³ In April 1994, Bassiouni says, the UN bureaucracy shut down the commission, over Bassiouni's loud complaints that only the Security Council should be able to do that.²⁴ "Things did not start as a conspiracy," Bassiouni says. "But it wound up with all the characteristics of a conspiracy."

Absent at the Creation

"If there's no international will to stop the killing," said a frustrated UN Security Council ambassador in July 1993, "I don't see how there can be will to have a tribunal." By the end of 1992, Serb forces had conquered 70 percent of Bosnia, and the great powers were still refusing to stop them. "The administration's initial impulse was to cover it up," says Warren Zimmermann, Bush's ambassador to Yugoslavia, of the atrocities. Muhamed Sacirbey, Bosnia's UN ambassador, recalls that proposals for a tribunal were "all intended to defuse the call for military action then," postponing intervention now by promising justice later.

America's position at first was to talk big and carry no stick. "I know of no instance where the violence was targeted by the Bush administration as war crimes," says David Gompert, then the National Security Council staffer on Eurasia. "That would be awkward for our policy." After months of studied disinterest from the Bush administration about the Balkan "hiccup," on December 16, 1992, Lawrence Eagleburger, Bush's secretary of state and a former ambassador to Yugoslavia, gave a dramatic speech at the Geneva peace talks. Eagleburger invoked "a moral and historical obligation not to stand back a second time in this century while a people faces obliteration." He specifically called for charges against Milosevic, Karadzic, and Bosnian Serb Army chief Ratko Mladic for "crimes against humanity," as well as lower-level figures like the notorious Serb paramilitary leaders Vojislav Seselj and Zeljko Raznatovic (Arkan), and a Serb soldier named Borislav Herak who had confessed killing



scores of Bosnians to a Bosnian court.²⁵ There was "dead silence" in the room, Eagleburger recalled, and David Owen, the European Union's mediator, "made it clear he considered my remarks unhelpful."²⁶

This sounded impressive, and, relative to other Western reaction to date, it was. But the speech came a month after Bush had lost the presidential election to Bill Clinton, so no one expected the lame-duck Eagleburger to deliver much of anything.²⁷ On top of that, Eagleburger billed his speech as a spontaneous outburst prompted by a conversation with Elie Wiesel.²⁸ "I don't have the sense that there was any intention of following up," says Zimmermann. "It was a kind of one-shot expression of irritation and opposition to Milosevic."

Clinton had blasted Bush during the 1992 campaign for coddling tyrants in Beijing and Belgrade, calling for war crimes charges. "If the horrors of the Holocaust taught us anything," Clinton said on August 5, "it is the high cost of remaining silent and paralyzed in the face of genocide. We must discover who is responsible for these actions and take steps to bring them to justice for these crimes against humanity."

But when Clinton was in Bush's shoes, Clinton shifted to the awkward position that he was against crimes against humanity but not prepared to send troops to stop them. After the Vance-Owen plan, which divided Bosnia into ethnic cantons, was proposed, Clinton read a book called *Balkan Ghosts*, which reportedly convinced him that the region was chronically violent and persuaded him to distance himself from Vance-Owen and from air strikes against Bosnian Serb forces.²⁹ In May 1993, Warren Christopher, Clinton's secretary of state, toured European capitals to sound out America's allies on a policy of lifting the arms embargo on Bosnia and launching air strikes against the Bosnian Serbs (known as "lift-and-strike"); when the Europeans refused to endanger their UN peacekeeping troops on the ground, the administration essentially shrugged and abandoned both lift-and-strike and Clinton's campaign oratory. On May 18, at a congressional hearing, Christopher proclaimed Bosnia "a problem from hell," born of ancient and therefore presumably unmanageable ethnic hatreds.³⁰ He turned Holocaust analogies against the Bosnians, not the Serbs: "It's been easy to analogize this to the Holocaust, but I never heard of any genocide by the Jews against the German people."³¹ On May 21, Clinton stuck by his refusal to send American ground troops to Bosnia: "We don't want our people in there, basically in a shooting gallery."

What did that leave for America to do? Set up a war crimes tribunal, but one without teeth. The Clinton administration's policy had the form

of legalism, insofar as it preferred law over other forms of political action, but without the outrage that would be necessary to use law effectively. Law became a euphemism for inaction.

The images from Omarska and elsewhere made some kind of gesture necessary, as Klaus Kinkel, Germany's foreign minister, admitted. In August 1992, he had suggested a tribunal³²—a legalist proposal from a country that was constitutionally incapable of military intervention. According to American diplomats, France and Britain seemed to oppose a tribunal, but did not want to be seen blocking one. The cynicism of the Security Council was not complete: Madeleine Albright, America's UN ambassador, herself a former Czech refugee from both Nazism and Communism, fought hard for a strong tribunal. It was against this background—nightmare images from Bosnia, coupled with a fundamental Western unwillingness to stop the Serb rampage—that on February 22, 1993, the Security Council unanimously passed a resolution deciding "that an international tribunal shall be established for the prosecution of persons responsible for serious violations of international humanitarian law committed in the territory of the former Yugoslavia since 1991."³³ True to UN form, the court was born with precisely that as its mouthful of an official name, stuck on its letterhead and fax cover sheets: The International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991.

Picking Goldstone

The West's stance toward Bosnia was perfectly summed up by Clinton on April 20: "The U.S. should always seek an opportunity to stand up against—at least speak out against—inhumanity."³⁴ So the most heated politicking was not over whether or not to have a tribunal; that could be a token gesture. The pitched debate was over the real question: what kind of tribunal?

The tribunal was evidently intended by many countries to be just another kind of reprimand, not an actual court with defendants in the dock. Even Albright did not seem confident that anyone would ever be arrested: "The Tribunal will issue indictments whether or not suspects can be taken into custody. They will become international pariahs."³⁵

There were two main kinds of opposition. First, more simply, those states that routinely abused human rights at home or abroad were afraid of setting a precedent that might eventually bring them into the dock.

"They fear the UN might do this to them," said a senior American official. Russia thought of its record in Chechnya, as well as its traditional ties to Serbia. Li Zhaoxing, China's UN ambassador, said that a court should rest on treaties, not Security Council fiat, and that the special ex-Yugoslavia case "shall not constitute any precedent."³⁶ After Tiananmen Square and Tibet, everyone knew what that meant.

Second, France and Britain were leading the UN Protection Force (UNPROFOR) in Bosnia, which saw its mandate as not to take sides but only to protect the delivery of humanitarian aid. Britain had 2,700 soldiers on the ground, and France 4,000.³⁷ UNPROFOR's rules of engagement did not allow it to fire on forces attacking civilians, only to return fire if UNPROFOR itself came under fire—rules that earned it the derisive Bosnian nickname of Un-Protection Force. Hoping to get their soldiers out of harm's way, Britain and France were inclined toward a quick settlement in Bosnia. A serious war crimes tribunal might indict men like Milosevic and Karadzic, who would presumably be needed for such a deal. A tribunal, which could not help but indict more Serbs than Bosnians, might expose British and French peacekeepers to Serb reprisals. Many French and British diplomats and military officials tended to see all sides in ex-Yugoslavia as equally guilty, and dismissed Albright's pro-Bosnian rhetoric as cheap: America did not have troops on the ground.

It seemed easy enough to cripple the tribunal without attracting the kind of embarrassing headlines that would come from open opposition to it. The evidence depended largely on victim testimonials, which would be harder to gather as time went on, or if perpetrators could threaten potential witnesses. "Valuable evidence, forensic and testimonial, is disappearing by the day," said Jeri Laber, executive director of Helsinki Watch. The UN bureaucracy was slow-moving, and the usual UN budgetary debates would further hamper things. Then there were the legal complexities of drafting a statute for the tribunal, which took three months.³⁸

The selection of eleven judges was the first hurdle. America put up Gabrielle Kirk McDonald, a talented former Texas district judge—not much of a gesture, except of Albright's wish to put a woman on the court. There were groans at the complete list, which included nominations by oppressive regimes like Zaire, Iran, and Peru, plus the breakaway ex-Yugoslav states of Croatia and Slovenia. Egypt—not America—nominated Bassiouni. Bosnia nominated Catharine MacKinnon, a feminist American law professor who would later be criticized by human rights activists for exaggerating rape statistics.³⁹ "The breakdown on judges resembles the breakdown on [Bosnia] policy," said a senior Western diplo-

mat. "Those who want to do the most have the least power in the Security Council, and those who want to do the least have veto power."

But when the UN General Assembly made its choices, the list wound up hack-free, with at least three high-profile judges: two prominent Egyptian and Canadian jurists, and, above all, Antonio Cassese, a compassionate and well-respected Italian international law professor and human rights advocate, who was named as the tribunal's president, or chief judge.⁴⁰ Bosnia's Sacirbey complained that there were no Muslims on the bench, showing "maybe outright bias towards Muslims."

In November, the eleven judges took office in The Hague.⁴¹ It was a sobering experience. Cassese would later reckon that the Security Council had "thought we'd never become operational. We had no budget, we had nothing. Zero." The judges were being paid on an ad hoc basis until the end of 1993. They were not even sure that the tribunal would stay in The Hague.⁴² There were a few computers, and two weeks of rent paid for a few rooms in the Peace Palace, the seat of the International Court of Justice (the other hamstrung UN tribunal in town). "Some of us were saying, 'Let's go slow,'" said McDonald.⁴³ But not Cassese, who set about finding the tribunal a headquarters in a slightly run-down building shared with a Dutch insurance firm, and starting work on a single courtroom and on a twenty-four-cell jail. The tribunal drew up rules of procedure, wrestling in particular with how to try crimes of sexual assault.⁴⁴ Worst of all, the tribunal had no indictments and no cases, for a simple reason: there was no prosecutor to bring them.

The selection of a prosecutor was a protracted, politicized fiasco.⁴⁵ It was clear that a weak prosecutor would doom the tribunal to obscurity. But because the prosecutor did not answer to anyone in making indictments, a bold prosecutor could indict Milosevic, Karadzic, or Tudjman. "That's the key," said Sacirbey. "If the office of the prosecutor is undermined for political expediency, the entire process is in jeopardy of making a mockery of the international legal system."

Bassiouni, still fuming over his fights with France and Britain, was actively lobbying to get the tribunal's top job, with backing from Boutros Boutros-Ghali, an old friend from Egypt who was now UN secretary-general. But Christopher had decided the prosecutor should not be an American, and Bassiouni quickly ran into resistance from predictable quarters. "There are certainly some members of the Security Council that are not too enthusiastic about having an aggressive prosecutor who is likely to disrupt political processes," Bassiouni said—with Britain obvi-

ously in mind. "They prefer a tame or manageable prosecutor to suit their political agenda. I'm obviously not one of those persons."

Although British officials would only call Bassiouni "controversial," Britain pointedly put forward its alternative: a Scottish prosecutor named John Duncan Lowe. Bosnia and its supporters saw this as an attempt to neutralize the tribunal. "We cannot have a European, and especially not an Englishman," said a pro-Bosnian Security Council representative. "Britain cannot negotiate and give absolution at the same time." A senior Western diplomat was more blunt: "If you're a Bosnian, do you want a Brit as your prosecutor? If you're France or Britain or Russia, do you want an outspoken Muslim?" Compromise candidates from Canada, Argentina, and Kenya were met with derision, says a Security Council ambassador. Later, Sacirbey went further: "Bassiouni was, behind the scenes, negated as a prosecutor because he was Muslim."

Predictably, this all blew up. Albright preferred Bassiouni over Lowe, but neither was likely to get a majority of the fifteen votes in the Security Council, and she wanted a unanimous vote to show world consensus.⁴⁶ (British officials would later also profess not to have wanted a split in the Security Council, which rang a little false since they had nominated the candidate that split the council in the first place.) Boutros-Ghali forced the issue in August 1993 by nominating Bassiouni, who was shot down by Britain. Boutros-Ghali then nominated India's attorney general, who was blocked by Pakistan.⁴⁷

Next, Diego Arria, Venezuela's UN ambassador, a sympathizer with Bosnia who had pushed hard for Bassiouni, suggested one of his own: Ramon Escobar Salom, the attorney general of Venezuela, a figure almost totally unknown to most of the Security Council. Bosnia trusted Arria, and Boutros-Ghali nominated Escobar. No one objected, and in October, the Security Council named Escobar as prosecutor.

No one, that is, except Escobar. He accepted on the condition that he could stay in Venezuela until February 1994 to continue a corruption probe against a former president there. In mid-January, he interviewed an Australian war crimes prosecutor, Graham Blewitt, to be deputy prosecutor. "The same day he brought me before the tribunal," Blewitt recalls, "before the judges in plenary, and said, 'We've found a good deputy prosecutor, and now I'm not going to take up the position of prosecutor, and I'm out of here.'" Escobar resigned and became Venezuela's interior minister.⁴⁸ These were not exactly the actions of a man burning to do righteous deeds in Bosnia.⁴⁹ Back to square one, America suggested a former U.S. attorney. This time it was Russia's turn to object, recalling a

deal not to name anyone from a NATO country for major international Bosnia jobs, which also blocked a Canadian candidate.⁵⁰ Tempers were running short.

It was at this point that Nelson Mandela saved the day. By now, Cassese was considering asking his fellow judges to resign en masse in protest. At the same time, quietly taking matters into his own hands, Cassese approached his ideal choice: Richard Goldstone, a high-profile South African judge. Goldstone was interested, but wanted to safeguard the seat he was sure to get on South Africa's new Constitutional Court. Mandela, democratic South Africa's first president, encouraged by a phone call from Christopher, agreed to hold Goldstone's place open while Goldstone served as prosecutor. "He certainly encouraged me," Goldstone says, of Mandela. "He thought it was important to take what was the first offer of a major international position after South Africa ceased to be a pariah." Mandela's intervention was a pure fluke, but the Security Council dared not play games with the heroic Mandela's pick. Cassese, ecstatic, faxed his fellow judges a Latin note with the traditional Vatican message heralding a new pope: "Habemus papum!"⁵¹ On July 8, the Security Council unanimously approved Goldstone. He took office the next month.

The tribunal had spent eighteen months without a prosecutor.

Pope Goldstone

Richard Goldstone, the man who was supposed to breathe life into the tribunal, does not act dynamic. He is short, stern, and almost owl-like. His most striking physical characteristic is the faint beginning of jowls, which gives the incorrect impression that he is almost constantly frowning. He has a pedantic and precise way of speaking, choosing every word with care. (He and Cassese made an odd pair: the top judge with the temper of a prosecutor, and the top prosecutor with the temper of a judge.) Goldstone seems, in a word, lawyerly.

But Goldstone's reputation at The Hague was, almost from the start, quite the opposite: as a politico. A student anti-apartheid activist at the University of the Witwatersrand in Johannesburg, he had worked his way up to the Transvaal Supreme Court and then the appellate division of South Africa's Supreme Court. Although some democratic activists criticized him for taking a judicial appointment from the apartheid state, he had managed to preserve a liberal reputation, and had found in apart-

heid's patina of legality a direct challenge to his faith in law as an instrument of substantive justice.

For Goldstone, politics often lurked behind law. In 1992, Goldstone pointed out that most South African judges "applied such [apartheid] laws without commenting upon their moral turpitude. A significant number, however, did not remain silent"—a group in which Goldstone included himself, and which he thought helped the courts' credibility. With his typical precision, Goldstone said: "Frequently it is difficult to decide where moral precepts and standards end and where strictly political doctrine begins. In that area, in my view, if a judge is to err, it should be on the side of defending morality."⁵²

Goldstone's belief in the interplay of politics and law was further shaped by the job that made his name (and bore it): chairing a government commission of inquiry into political violence from 1991 to 1994, better known as the Goldstone commission. The commission mostly criticized apartheid South Africa's police, as well as the Zulu-based Inkatha Freedom Party and Mandela's African National Congress. Goldstone later said he was shocked at how high up apartheid's brutality went. In many ways, Goldstone's task at the commission paralleled his responsibilities at The Hague. He was independent in his choice of cases; there were more cases than he could possibly investigate, so he had to choose instructive ones; his court had strictly limited powers; and he was executing a legal mandate in a highly politicized environment.

It is never clear exactly to what extent Goldstone—no naïf—saw himself as truly apolitical. On the one hand, in public he declared himself to be simply executing a mandate. "I've got no function other than to expose the causes of violence," he told *The Los Angeles Times*. "And whatever the political consequences of what we find, so be it."⁵³ On the other hand, in 1992 he had implied that the line between morality and law was not always bright, and that moral considerations should guide judges. However he resolved these tensions, it was with this background that Goldstone left South Africa for The Hague.

He arrived to find a shambles. Goldstone was appalled at the slow-moving UN bureaucracy, which he had to "beg and cajole" to do its work. "A bureaucracy made up of civil servants from 186 countries is more than 186 times worse," Goldstone would later complain. Some members of the prosecutor's staff were still figuring out the situation in ex-Yugoslavia, and the tribunal admitted it was having problems finding enough quali-

fied investigators.⁵⁴ In December 1994, Goldstone reckoned he needed twice the number of staff he had, including lawyers and investigators.⁵⁵

Blewitt had started work on fourteen investigations, often of low-level figures.⁵⁶ It was a daunting task. The tribunal had to excavate mass graves, find witnesses to crimes that had happened two years ago, create a witness protection unit, counsel rape victims, and cull eyewitness fact from recycled rumor. The early work relied on the commission of experts' best work, a report on Prijedor, which prosecutors would nevertheless later criticize. Some documents from the commission of experts might be forgeries by Croatian intelligence, says a former commission member. It would be enormously difficult to meet legal standards of proof.

Then there was the huge problem of money. In 1993–94, the UN at first proposed the shockingly small sum of \$562,300 for investigations—including witness travel, interviews with refugees, forensic experts, translators, and protection, according to former Bassiouni aide Tom Warrick. In December 1993, the UN General Assembly gave the tribunal \$5.6 million for the first half of 1994, so the court could only make contracts for those six months. That meant it could not sign a lease, hire long-term staff, or buy equipment for investigations. This scared away many potential staffers.⁵⁷ As the tribunal put it in an official report, the court "was operating with one hand tied behind its back."⁵⁸

In April 1994, the General Assembly gave over another \$5.4 million to cover expenses until the end of December 1994. The tribunal could now sign a lease for its Churchillplein headquarters in The Hague, but the sum was still hopelessly inadequate. (By way of comparison, the tribunal's 1999 budget was over \$94 million.) The tribunal only had one courtroom for three chambers; the prosecutor's office was desperately trying to recruit serious staff; and the judges were still drawing their salary on an ad hoc basis.⁵⁹ In July, twenty prosecutors and investigators were sharing a single telephone to call outside of Holland.⁶⁰ It was only in July 1994 that the prosecutor's office felt capable of starting field investigations.⁶¹ The UN's two budget committees tried to cut the budget by 20 percent for 1994.⁶² Goldstone had to fly to UN headquarters in New York, cap in hand.⁶³

Small wonder that the UN, and particularly its office of legal affairs, continued to frustrate the tribunal. "You know, I used to think that on the list of people who wanted to get Ralph Zacklin, Cherif [Bassiouni] was number one," said an official after watching Goldstone fume in a meeting. "Now he's number two." When Zacklin was mentioned, one senior tribunal official snapped, "Arrogant little shit." Asked about

Zacklin (who has since been promoted to UN assistant secretary-general for legal affairs), Goldstone chuckled: "That is below the belt."

Governments were slow to stuff Goldstone's pockets. America was the most generous, giving \$3 million for computers and, crucially, seconding twenty-two investigators and prosecutors. This was a huge shot in the arm (the total number of prosecution staffers was only sixty-seven),⁶⁴ although it would later cause grumbling about the dominance of the "American mafia" and UN disapproval of more American hires, plus the usual complaints about America's delinquency in paying UN dues. Major's Britain gave \$30,500 and one staffer. France gave nothing. Sweden, Denmark, Malaysia, and Pakistan were all more generous than Britain and France.

To the frustration of American officials, this European foot-dragging reflected a general European sense of the Balkans as an endless quagmire for European soldiers. France and Britain, said a senior American diplomat, were "further along the line toward reconciliation without justice." "When faced with a formal decision in the Security Council, they're helpful," said an American official, of the British. "When they have to do something voluntarily, they aren't." British Foreign Office diplomats were evasive when asked if they would use sanctions for states that rebuffed the tribunal. The problem, said a British official, was "indicting people [when] you may be negotiating with them."

America was more enthusiastic, but still underwhelming. In February, after a Bosnian Serb shell exploded in Sarajevo's Markale market, Clinton snapped, "Until these folks get tired of killing each other . . . bad things will continue to happen." Steve Walker, a Croatia desk officer and Balkans specialist at the State Department, who resigned in protest of Clinton's inaction in 1993, says that the State Department was "barely going through the motions," doing just enough to outperform America's more reluctant allies. "Saying we supported the war crimes tribunal was easy," he said. Albright was more serious, but it was clear she had no great backing in Washington. Even John Shattuck, the assistant secretary of state for human rights, kept expectations low. "Justice doesn't have to ultimately mean putting people behind bars," Shattuck said. "I would not measure [the] tribunal in terms of how many people go to jail, or top-level people, because the number is going to be very low. Success is a commitment to establish principles of accountability, getting out the truth."

In the face of all this, Goldstone's immediate task was to show that the tribunal was viable and relevant. He insisted that no one on the political and military ladder was immune, and that he preferred to aim at the top. But his first indictments were far lower down. On November 4, 1994, the tribunal confirmed Goldstone's first indictment: of the commander of the Susica camp in Bosnia, accused of crimes against humanity in the summer of 1992.⁶⁵ There were no illusions that Bosnian Serbs would turn him over. On November 8, Goldstone asked Germany to defer to The Hague's jurisdiction the prosecution of Tadic, a Bosnian Serb in German custody, already indicted by Germany for crimes at Omarska.⁶⁶ Tadic would be the first person in the tribunal's custody.

Goldstone knew he needed to raise the tribunal's visibility, and even the judges were urging him to issue more indictments.⁶⁷ Although some of the early indictments are unlikely to hold up in court, they seemed necessary at the time. Not everyone agreed. "We waste our time going after these small fish," said a Goldstone staffer. Cassese was against "trying small fry." In 1997, a senior tribunal official would describe the list of indictees as "this fucking list of idiots." Some of these cases rested on a small number of witnesses; if two or three could be intimidated out of testifying, said nervous prosecutors, then the case would collapse. (In February 1998, Robert Gelbard, an American envoy, would publicly say that America thought many indictments "will not stand up in court."⁶⁸ Louise Arbour, Goldstone's successor, has dropped indictments against seventeen suspects.)

By far the worst problem was the unfolding bloodbath in ex-Yugoslavia. Goldstone came into office while Serb forces continued to besiege Sarajevo and other Bosnian towns, and in the aftermath of the brutal 1993–94 war between Bosnian Croat forces and the Bosnian government. Except for the Bosnian government, authorities in ex-Yugoslavia viewed The Hague with contempt. Serbia, blocking international investigations, complained that the tribunal was biased against Serbs. Against this, the tribunal could only threaten to report noncompliance with its orders and arrest warrants to the Security Council.⁶⁹

To no avail. Cassese formally protested five times, and each time got roughly the same reply from the Security Council.⁷⁰ "We deplore their attitude, we condemn their attitude. Either deplore or condemn," Cassese said. "Maybe next time they'll find a third word." Relying on a reluctant UN and NATO to enforce its edicts, the tribunal could only inconvenience and stigmatize its suspects. Goldstone often pointed out that it

was hard to be a world leader if one could not travel. Under the tribunal's Rule 61, Goldstone could hold a public hearing on the evidence against suspects being shielded by recalcitrant Balkan authorities.⁷¹ But Goldstone had no troops.

Protecting Soldiers

NATO had the troops. In all of The Hague's early difficulties, the fundamental hurdle was the West's refusal to take military action against war criminals in ex-Yugoslavia.

A dread of Serb reprisals against UNPROFOR lay at the root of French and British fears of being seen as less than impartial.⁷² UNPROFOR's guidelines made it perfectly clear that humanitarianism yielded pride of place to self-protection: "The execution of the mandate is secondary to the security of UN personnel."⁷³ David Owen later wrote, "I believe Mladic knew that UN troops were his ultimate safeguard against NATO air power."⁷⁴

To the frustration of its NATO allies, America refused to send troops into Bosnia. Colin Powell, chairman of the Joint Chiefs of Staff under Bush and then Clinton, later wrote: "No American President could defend to the American people the heavy sacrifice of lives it would cost to resolve this baffling conflict."⁷⁵ In 1993, Clinton's choice of a lift-and-strike policy had the advantage of not embroiling American soldiers in ground combat. But it risked UNPROFOR troops, so the Europeans scotched the idea.⁷⁶ America's reluctance to risk troops overseas was only strengthened in October 1993, when eighteen American soldiers were killed in Somalia while trying to catch faction leader Muhammad Farah Aidid.

Such American reticence complicated the tribunal's work, as for instance in the excavation of a mass grave in a field at Ovcar, near Vukovar, where some 260 Croats from Vukovar hospital had allegedly been executed by Milosevic's Yugoslav National Army in 1991. The forensic investigators at Ovcar were led by Physicians for Human Rights, a Boston-based organization. But when the group asked for military engineers, in June 1993, the State Department and the Pentagon—to Albright's chagrin—refused, fearing Serb attacks.⁷⁷ (Britain, according to Kalshoven, never even replied to a similar request.)⁷⁸ "If you want us to deploy soldiers," said James Rubin, Albright's spokesman and confidant, "you need more soldiers to protect them, a whole 'nother level of commitment which the United States government has not reached."

The investigators had to settle for about 150 Dutch army volunteers. According to Eric Stover of the UN team, they had to beg permission from the local Serb authorities, who demanded the exhumation of a mass grave with dead Serbs. In October 1993, the UN team set out, and eerily found itself being housed in barracks that backed onto a training ground for Arkan's Tigers, a savage Serb paramilitary group. The UN team was only able to clear away the overgrowth at Ovcar before the local Serb general, Milan Milovanovic, sitting beneath a picture of Milosevic, ordered them out.⁷⁹

As the war dragged on, both Britain and France lost all stomach for the UNPROFOR mission. Most of Major's cabinet wanted Britain's 5,500 troops out of Bosnia before the winter of 1995–96, and France warned that it would bring its 5,000 UNPROFOR soldiers home if America did not make a military commitment in Bosnia.⁸⁰

America was no more enthusiastic. Clinton resented the media's focus on war crimes in Bosnia. "They keep trying to force me to get America into a war," Clinton once said.⁸¹ "The president was being asked here to go out on a limb with an issue that had no constituency," says Dick Morris, Clinton's former pollster and strategist (who has since turned against Clinton). In May 1995, Clinton tentatively said that America "should be prepared to assist NATO" if NATO asked. The White House panicked as Clinton's approval ratings dropped and Morris warned of public perceptions of another Vietnam. Clinton backtracked, vowing to send troops to help British and French soldiers only if there was no fighting going on.⁸²

There was a vivid example of the West's emphasis on its own soldiers in May 1995. On May 25, NATO planes finally struck at Bosnian Serb forces that had defied a NATO ban on shelling Sarajevo, a UN-designated "safe area." The Serb forces retaliated by shelling all six "safe areas" in Bosnia, including a shell that killed seventy-one people in Tuzla. This did not faze NATO. But then the Serbs took more than 350 UNPROFOR soldiers hostage, chaining one Canadian soldier to a Bosnian Serb Army ammunition dump. Holbrooke, a lone hawk, argued to Christopher that NATO should demand the release of hostages and continue bombing if the Serbs refused. Instead, the American government decided to quietly put off air strikes, fearing Serb retaliation against the hostages. Britain, France, and Canada caved in, stopping the air strikes and starting quiet talks to get their hostages back. Bernard Janvier, the UN force commander in Bosnia, requested and got a meeting with Mladic. Janvier told Yasushi Akashi, the UN special representative on Bosnia, "We are no longer able to use air power because of the obvious reason that our sol-

diers are on the ground." Akashi announced that UNPROFOR would stick to "strict" peacekeeping.⁸³ And on September 10, Janvier met with Mladic, at the request of President Jacques Chirac of France, to ask for the release of two downed French pilots.⁸⁴

The nadir came with the Srebrenica massacre in July 1995. As he conquered Srebrenica, Mladic took 450 Dutch UNPROFOR troops hostage as a hedge against NATO air strikes. "Srebrenica taught us that our lives were less valuable than the lives of the UN soldiers," one survivor said later. "That, for us, was the final truth."⁸⁵ A Bosnian officer said that, for the West, thirty Dutch hostages in Serb hands were worth more than 30,000 Muslims. On July 10, Joris Voorhoeve, the Dutch defense minister, did decide to risk thirty Dutch lives if there were NATO bombings; but the NATO raids never came. The Clinton administration's first reaction to Srebrenica was to avoid having to risk its own troops—not by rescuing the Bosnians, but the Dutch UN troops. Akashi met with Mladic to try to free the UNPROFOR hostages and to let the International Committee of the Red Cross check on thousands of Muslim prisoners.⁸⁶ In an impetuous flash of Western courage, Chirac suggested to Clinton sending French and American troops to liberate Srebrenica. Clinton, incredulous, refused, as did Britain and Holland. America also dismissed Chirac's proposal that American helicopters fly French troops into the threatened enclave of Gorazde, a mission seen as too risky for the American pilots; instead, NATO threatened air strikes.

But when a single American life was on the line, America could make spectacular efforts. As American soldiers were dying in Somalia in 1993, Clinton had exploded: "We're not inflicting pain on these fuckers. . . . When people kill us, they should be killed in greater numbers. . . . I believe in killing people who try to hurt you, and I can't believe we're being pushed around by these two-bit pricks."⁸⁷ In Bosnia, he got his chance. Just over a month before Srebrenica's fall, a Bosnian Serb Army missile shot down an American F-16, leaving its pilot, Scott O'Grady, trapped behind Serb lines. O'Grady was rescued six days later by Marine commandos.⁸⁸ Clinton himself was notified in the White House residence by a midnight phone call. "He was just gleeful," remembers Dick Morris, "like he was at a basketball game." O'Grady—an American war hero, without an American war—returned home to national acclaim and a White House reception with Clinton, Vice President Al Gore, William Perry, the secretary of defense, and John Shalikashvili, chairman of the Joint Chiefs of Staff. When NATO finally started bombing Bosnian Serb forces soon after, Clinton remembered the area where O'Grady had

been downed, and wanted to strike there on principle. "Did he value American lives more than Bosnian lives?" says Morris, of Clinton. "Damn right he did. He's president of the United States."

"An Academic Exercise"

Even with Goldstone at the helm, the tribunal staggered through much of 1995. Its 1995 budget of \$25 million was insufficient for witness protection and investigations, and prosecutors worried they were not getting crucial intelligence from Western governments.⁸⁹ Goldstone, who took media relations seriously, could use his high profile to appeal directly to Western public opinion. In retrospect, Goldstone is not sure if he made enough noise or not: "[P]ossibly if one had been less gracious and less diplomatic at that point, it may have been worse. . . . We were a very new institution. We had to establish our own credibility." Goldstone could also put pressure on the West simply by issuing more indictments. On February 13, he indicted twenty-one Bosnian Serbs for running the Omarska concentration camp in 1992. Camp commander Zeljko Meakic was slapped with the first indictment ever for genocide.⁹⁰ But of the twenty-one, only the low-level Tadic was available for trial. "Not a terribly intelligent person," sniffed a Goldstone staffer.

The idea was to build upward from such cases. Hopes quickly faded for a "smoking gun" document that would directly implicate Milosevic in "ethnic cleansing" in Bosnia.⁹¹ Instead, the prosecutors could only hope to build slowly on divisions among the nationalist Serb and Croatian leadership. During Serbia's 1993 parliamentary elections, for instance, the regime's men had accused Seselj's paramilitaries of war crimes; Seselj fired back that he would go to The Hague, but "I don't see how I could go without Slobodan Milosevic."⁹² Seselj would later claim to have "incontestable proof" that Milosevic, not Karadzic or Mladic, was commanding the war in Bosnia.⁹³ Relations between Milosevic's regime in Belgrade and the Bosnian Serb leaders in Pale were always fractious and often poisonous. If a mid-level leader could be put on trial, he might give information on higher-ups to save himself. The cases against senior figures, if Goldstone dared, would rest on command responsibility: showing that leaders must have either ordered, or known of and not prevented, war crimes.

This was no small task. Because the Serbs were utterly uncooperative, it was easier to gather evidence from Bosnians and, to a lesser extent, Croats—ironically, the Serb accusation of bias made it more likely that

The Hague would indict Serbs. Many of the early indictments aimed low, at figures too uninvolved in the chain of command to incriminate the major leaders. It was difficult to trace the chains of command in Serbia and the Bosnian Serb power structure, and the links with paramilitary groups were particularly murky. These were some of the possible reasons why Goldstone did not publicly indict prominent thugs like Arkan and Seselj. Asked about Arkan and Seselj, Goldstone said, "The only thing I can say to anybody who thinks people should be indicted who haven't been indicted: give us the evidence. And by evidence I don't mean allegations. I mean witnesses or documents with which we can go to court." Holbrooke writes that he repeatedly pressed Goldstone to indict Arkan, but got no answer.⁹⁴ (In June 1997, Arkan would claim that he was exonerated because he had not been indicted.⁹⁵ It was not until September 1997 that Arkan was finally secretly indicted—more than five years after his war crimes made him notorious.)

How high could the tribunal dare to aim? The most obvious—and delicate—target was Milosevic, who had driven Yugoslavia into collapse and war. In the event, Milosevic would not be indicted until 1999, for atrocities in Kosovo. But as early as 1991, his JNA had committed war crimes in its war with Croatia, and Western intelligence had no doubts that Serbia was helping the Bosnian Serb Army and Serb paramilitaries. Roy Gutman, a respected journalist, argues that under Serbia's own chain of command, Milosevic bore command responsibility for Serb paramilitary groups.⁹⁶ But indicting Milosevic might set off a political earthquake. Goldstone insisted that he did not care. "If we get evidence, we'll give priority to higher-ups," said Goldstone in November 1995, when asked about indicting Milosevic. "I don't exclude anybody. If we haven't indicted someone by now, it's because we don't have evidence." He firmly denies that there was ever any pressure to spare Milosevic.

Other tribunal staffers admitted to more nervousness. Because the standards of proof for an indictment are lower than those required for a conviction, some staffers in the prosecutor's office figured they could indict Milosevic, but they were not sure they could get a conclusive conviction in court. People in the prosecutor's office liked to quote a proverb (although no one was sure where it was from): "If you're going to strike at the king, make sure you kill him." It would be irresponsible and mortally embarrassing to lodge a weak indictment against a major figure.

Then there were the political problems: disrupting Balkan diplomacy, and testing the limited tolerance of the Security Council. Milosevic was

cultivating an image of himself as a useful interlocutor for the West. It is impossible to believe that Goldstone was not aware of these considerations, although he would vociferously deny that politics played any role in his decision. "I think there'll be hesitation from the prosecutor," said one Goldstone staffer. "Politically, you don't want to dislocate someone from the political process." Hague staffers might not have needed to worry; a senior Clinton administration official says that an indictment would not have prevented America from negotiating with Milosevic.

Tudjman, the other major nationalist seen as useful by the West, also seemed to be off the hook. Prosecutors, while aiming at Bosnian Croat atrocities in the Lasva Valley, said they were having difficulties definitively linking him to those operations. "I just don't think it's going to happen," said a Goldstone staffer. "Making a Greater Croatia is not a war crime." Moreover, says a Bosnian diplomat, Bosnia was somewhat circumspect in its accusations against Croatia, realizing that Croatian support was needed to balance against the Serb forces.

That left Karadzic and Mladic. The Bosnian Serb leaders had a vile reputation in the West, and Karadzic was increasingly in ill odor in Belgrade.⁹⁷ Marginalizing Karadzic and Mladic might help peacemaking efforts. "You have two options," said a Goldstone staffer. "A, you can indict Milosevic and be shut down. B, or you can do low-level [indictments] and do a few trials, like Mladic and Karadzic." Though not as bold as indicting Milosevic, it was still a heady prospect. Goldstone thought that the Security Council probably had never thought that creating the tribunal would lead to the indictment of Karadzic and Mladic.

"Goldstone really pushed on Karadzic and Mladic, to the point of rebellion," remembers a member of Goldstone's staff. "He wanted it sooner rather than later." The Bosnian government was also investigating Karadzic and Mladic, which helped force Goldstone's hand. On April 21, 1995, Goldstone asked Bosnia to suspend its investigation and defer to The Hague instead.⁹⁸ Finally, after issuing another round of lower-level indictments,⁹⁹ Goldstone threw his thunderbolt: on July 25, he indicted Karadzic and Mladic for genocide and crimes against humanity.¹⁰⁰

The indictment, bringing together investigative work from several teams, was a kind of accounting for much of the Serb war in Bosnia. The charges were a grotesque litany of the cruelty Karadzic and Mladic had presided over: shelling and sniping at civilians in Sarajevo and other towns; camps like Omarska, Keraterm, Trnopolje, Luka, and Manjaca¹⁰¹;

the sacking of mosques and Catholic churches; murder, rape, and torture. There was also one count for taking UNPROFOR troops hostage two months earlier.¹⁰²

European countries, used to negotiating with Karadzic and Mladic, were startled to have them named as pariahs.¹⁰³ "I never thought that that was insurmountable," recalls Warren Christopher, "or that the tribunal shouldn't do what it needed to do because of the negotiating process." Other diplomats, including some at the State Department, were more alarmed. After all, America had often reached out to Karadzic. In December 1994, America had broken the Contact Group ban on meeting Karadzic by sending envoy Charles Redman to Pale,¹⁰⁴ and Jimmy Carter had met with Karadzic and Mladic at around the same time. (A British, French, and American delegation had personally met with Mladic in Belgrade two days before he was indicted, albeit to threaten him with air strikes.) One tribunal official said he feared that Goldstone's move would be an invitation for the Europeans to "turn the heat up on Goldstone. They'll find he's made of asbestos." Goldstone says he did not worry much about incurring the Security Council's wrath: "You know, obviously it would be naïve not to take into account all realities. But it was really done as, if you like, as an academic exercise. Because our duty was clear. We weren't going to be dissuaded from doing it by any prognostications—good or bad—as to what effect it would have." Serbia had talked of allowing the tribunal to open a one-person office in Belgrade (which Goldstone called "a slight chink in the opening of a door if one had extremely good eyesight"); that, and whatever other tiny gestures Serbia might have made, were now put on hold. Predictably, the Pale leadership denounced the tribunal as anti-Serb.

The indictment of Karadzic and Mladic was, like so much of the tribunal's work, simultaneously revolutionary and hopelessly insufficient. Before Goldstone could issue the actual indictment on July 25, Karadzic and Mladic had made it clear exactly how seriously they took the West's muted warnings about war crimes, and Goldstone's moves toward indicting them. On July 11, Mladic led his Bosnian Serb Army into Srebrenica, one of six Bosnian towns ostensibly under UN protection. "In the end," Mladic bragged, "the fate of Srebrenica's Muslims lies in my hands."¹⁰⁵ Bosnian Serb forces then proceeded to slaughter at least seven thousand Muslims at Srebrenica—the single worst crime against humanity in Europe since World War II. The very day that The Hague indicted

Karadzic and Mladic, Mladic's forces took Zepa, another UN "safe area."¹⁰⁶

NATO Strikes

It was only after Srebrenica that the White House began to rethink its Bosnia policies, with Clinton increasingly convinced that the Bosnian Serb leadership only reacted to military force.¹⁰⁷ On August 10, Albright gave a withering denunciation of the Bosnian Serbs at a closed session of the UN Security Council, unveiling classified U-2 spy plane photographs of mass graves near Srebrenica. Holbrooke started a new diplomatic shuttle. Holbrooke was chosen for his toughness, which Christopher thought would let him deal with all the parties—including the Serb war criminals.¹⁰⁸

Clinton and Holbrooke were horrified when three senior American diplomats were killed when their armored personnel carrier skidded off the treacherous Mount Igman road into Sarajevo, which they had to take because the Serb authorities would not let them use Sarajevo's airport. These American deaths drove home the horrors in Bosnia to the administration in a way that untold thousands of Bosnian deaths had not. In his memoirs, which begin with a harrowing account of the fatal trip over Igman, Holbrooke wrote: "Within the Administration, the loss of three friends on Mount Igman carried a special weight; the war had, in effect, come home."¹⁰⁹

The balance of forces on the ground was swinging against the Serbs. In early August, Croatia reconquered the Krajina. The last straw came when, on August 28, Bosnian Serb shelling killed thirty-eight people in Sarajevo's downtown marketplace. Unlike thousands of shells before, this one got a reaction. After the fall of Srebrenica and Zepa, with NATO careful to get UN troops out of Gorazde, with UN personnel out of Serb territory, and with Bihac secure, for the first time since 1992 there were no UNPROFOR forces vulnerable to Serb hostage-taking.¹¹⁰ (NATO's motivations were not altogether humanitarian; since late 1994, under a secret plan called Op-Plan 40104, NATO was committed to sending 60,000 troops—including 20,000 Americans—to extricate UNPROFOR, a mission that might be just as risky as enforcing a peace and much more ignominious.) On August 29, NATO planes unleashed a massive bombing campaign against Bosnian Serb positions. In September, a Croatian and Bosnian offensive was driving Serb forces out of northwestern Bos-

nia. And as the bombs fell, Holbrooke shuttled around the Balkans trying to translate the unprecedented strikes into a peace initiative.

The Milosevic Strategy

Would America deal with Karadzic and Mladic? "I don't think any of us were very enthusiastic about dealing with people who were indicted," Christopher says. "I think we were all queasy about that." Holbrooke makes a point of distancing himself from Karadzic and Mladic in his memoirs, and he publicly excoriated them for Srebrenica, calling the massacre a crime against humanity reminiscent of Himmler and Stalin.¹¹¹ Anthony Lake, then Clinton's national security advisor, is more sanguine: "There's always a balance between achieving justice and understanding the importance of setting precedent for the future, so that other future war criminals will reflect, and sacrificing future lives on the altar of justice for the past. And I think that to arrive at an absolutist answer on either side of that argument is wrong." In private, some American leaders were more circumspect. "I had no problem with that," says a senior American official, of Holbrooke meeting Karadzic and Mladic.

But the real point was not the indictments, but that the White House increasingly saw Karadzic and Mladic as useless interlocutors, unlike Milosevic. In the spring of 1995—before Goldstone's indictments—Robert Frasure, Holbrooke's deputy, had got the American government to follow what American officials called "the Milosevic strategy": dealing with Milosevic and pressuring him to deliver the Bosnian Serbs. If "the Balkan political hit man" did his bit, America would relax the sanctions that were crippling Serbia's economy. This strategy would force Serbia and the Bosnian Serbs together—ending what Frasure, who had held many talks with Milosevic, had once called "the good Serb—bad Serb game."

Holbrooke decided to back Frasure (who would die in the Igman crash) to the hilt. Half a year before NATO started bombing, Holbrooke writes in his memoirs, he had decided to negotiate only with Milosevic.¹¹²

The Bosnian government accepted the substance of the Milosevic strategy. In late August, Alija Izetbegovic, Bosnia's president, and Sacirbey had agreed that the Americans could only meet with Karadzic or Mladic if the two Bosnian Serb leaders were in a delegation led by Milosevic in Belgrade.

If the Milosevic strategy did not work out, then America would have to think about setting up a second channel to the Bosnian Serb leaders. America kept a number of back channels open to the Bosnian Serb lead-

ership: through EU envoy Carl Bildt, Janvier, and Russian deputy foreign minister Igor Ivanov (although Andrei Kozyrev, Russia's foreign minister, had urged Lake to try the Milosevic strategy). Bildt frequently checked in with the Bosnian Serb leaders, and Janvier had a number of negotiations with Mladic during NATO's bombing campaign. Clinton himself would be kept apprised of the Janvier-Mladic talks by a phone call from Willy Claes, NATO's secretary-general, on September 2.

Karadzic also tried to reach out to America through Jimmy Carter, most notably in a letter on August 28, hinting at accepting America's peace efforts. Carter had the letter faxed to Holbrooke the same day, although American officials seem not to have taken it particularly seriously. For now, the Milosevic strategy was the order of the day. In his memoirs, Holbrooke writes that he would meet with Karadzic so long as Karadzic was in a delegation led by Milosevic's regime.¹¹³

Still, these channels to the Bosnian Serbs, according to American officials, seemed to make Milosevic nervous. If he could not deliver the Bosnian Serbs, then sanctions on Serbia would remain in place. Holbrooke's team arrived in Belgrade on August 30, as NATO's air war was just getting under way. Milosevic greeted them with a letter—known as the Patriarch letter, because it was witnessed by the patriarch of the Serbian Orthodox Church—in which Karadzic, Mladic, and the other Bosnian Serb leaders agreed to subordinate themselves to Milosevic in a joint Serb delegation. In his memoirs, Holbrooke writes that he gave Milosevic a stern lecture that Karadzic and Mladic could not be part of any peace conference. When Milosevic said that the indicted men were necessary to make peace, Holbrooke offered to help arrest them personally if they dared set foot in America. "You have just shown us a piece of paper giving you the power to negotiate for them," Holbrooke told Milosevic. "It's your problem."¹¹⁴

Milosevic was not willing to completely sell out the Bosnian Serb leaders. Although Milosevic often insulted Karadzic to the Americans (once calling him a "crazy, dumb maniac"), Milosevic also tried to shield Karadzic from being frozen out of diplomacy because of war crimes accusations. On September 1, in Belgrade, Milosevic asked Roberts Owen, the legal adviser on Holbrooke's team, to postpone the issue of whether indicted war crimes suspects might be disqualified from high office in Bosnia. The Americans thought that Milosevic was worried that this would prove too much for the Bosnian Serbs. "In the house of a man just hanged," Milosevic told Owen, "don't talk about rope."

American diplomats also worried that the Bosnian Serbs were too splintered and disparate for Milosevic to deliver.¹¹⁵ The most dramatic example came when NATO tried a pause in its bombing, in hopes that the Bosnian Serbs, under pressure from Milosevic, might be ready to capitulate and pull back their heavy weapons besieging Sarajevo. Not Mladic. Instead, the Bosnian Serb general sent Janvier a ranting letter calling NATO worse than Hitler, which made some American diplomats question Mladic's sanity. So NATO started bombing again, with some diplomats left skeptical of the Milosevic strategy. James Pardew, the Pentagon man on the shuttle team, wrote that the bombing pause had shown that Milosevic could not deliver Mladic after all. Mladic was the crucial Bosnian Serb leader, Pardew thought, and worried that the Milosevic strategy might lead to a dead end: that Mladic would not accept a deal cut with Milosevic, and that this deal would only pave the way for concessions to Mladic.

The Milosevic strategy did not mean that the Americans could avoid the prospect of dealing directly with Karadzic and Mladic. Flying into Belgrade overnight on September 12–13, Holbrooke writes, he weighed the moral implications of meeting with war criminals.¹¹⁶ Holbrooke writes that he was “deeply influenced” by the examples of Raoul Wallenberg and Folke Bernadotte, who “had decided to deal with a mass murderer in order to save lives.”¹¹⁷ The comparison is unenlightening. Wallenberg was a young attaché in the Swedish legation in German-occupied Budapest in 1944, desperately trying to give protective Swedish passports to Hungarian Jews as the Nazis were deporting them to be murdered; Holbrooke was the assistant secretary of state of the United States, the planet's only superpower and the leader of the planet's most powerful military alliance, which was massively bombing the Serb leadership into submission.

The Americans had previously sounded out Goldstone about meeting Karadzic and Mladic. Goldstone had told the Americans that he would not mind if there was a meeting with Karadzic and Mladic in Belgrade, although some State Department officials had thought it would be more seemly to meet the two men inside Bosnia. Goldstone claims not to remember this green light, but does not dispute it. He says that indicted suspects are innocent until proven guilty, and that if the Americans chose to deal with Karadzic and Mladic, “that was their affair.”

In his memoirs, Holbrooke writes that it was “acceptable to meet with Karadzic and Mladic if it would help the negotiations.” The Americans, Holbrooke writes, would “not ask to meet the two men, but would see

them, if Milosevic suggested it. . . . We would not meet with any Bosnian Serbs—indicted or unindicted—if they presented themselves as a separate delegation or tried to negotiate on their own.”¹¹⁸ In other words, the issue for Holbrooke was upholding Milosevic's primacy, not Goldstone's indictments.

Milosevic almost immediately forced the issue. On September 13, at his villa outside Belgrade, Milosevic told Holbrooke that Karadzic and Mladic were in another villa nearby. Holbrooke writes: “I simply hated the two men for what they had done—including, indirectly, causing the deaths of our three colleagues.” But so long as Milosevic led the delegation, and kept Karadzic and Mladic from “historical bullshit,” the Americans would deal with them. Holbrooke, by his own account, only asked Milosevic if Karadzic and Mladic could be helpful.¹¹⁹ Holbrooke does not mention that their presence on Serbia's soil was a direct violation of international law; all states are obliged to comply with the Security Council and arrest tribunal indictees.

Holbrooke, disgusted, refused to shake hands with the indicted men, although other Americans did. Karadzic tried to subvert the Milosevic strategy by bringing up his ties to Carter, implying that Karadzic had another channel to the Americans. Holbrooke slapped Karadzic down for this, and Milosevic later specifically told Holbrooke that Holbrooke had done well to disabuse Karadzic of any such illusions. Holbrooke called Christopher to describe the scene; the secretary of state knew full well that his assistant secretary was talking with international fugitives. After two o'clock in the morning on September 14, the Pale contingent—including Karadzic and Mladic—signed an American paper pledging to end the siege of Sarajevo.¹²⁰

Unbeknownst to the public, the Americans held one more meeting with Karadzic. On September 23, an American delegation—made up of State Department Balkans director Christopher Hill, Roberts Owen, Pardew, Belgrade chargé d'affaires Rudolph Perina, and State Department Serbia desk officer John Burley—held secret talks with Karadzic himself in Belgrade. Milosevic told the team that Karadzic would be negotiating. This, Hill said, was fine, with the standard caveat that Karadzic could not be the head of the Serb delegation. These talks went no more smoothly than the last ones with Karadzic. He insisted on Republika Srpska—the self-styled Bosnian Serb state—being an independent state, not merely the Serb part of a central Bosnian state. He called the proposed joint presidency “one-half of hell.” Once again, the Americans turned to Milosevic to whip the Bosnian Serbs into line. And once again, Milosevic did.

Not everyone was comfortable with the Milosevic strategy. Sacirbey, as Bosnia's foreign minister, complained that the Americans were spending too much time in Belgrade. Christopher worried about such reliance on Milosevic, and many American diplomats seemed to think that the Bosnian Serbs could not be entirely frozen out. And, of course, there was always the embarrassment of Milosevic's dirty hands—Serbia's war crimes in Croatia and its links to the Bosnian Serb Army and to Serb paramilitaries.

In particular, the Americans were horrified by Serbia's ties to Arkan. Holbrooke personally raised this issue with Milosevic twice. First, on September 30, Holbrooke met with Shattuck in Zagreb, where Shattuck was investigating human rights abuses around the region. Holbrooke and Shattuck both wanted to look unbiased, and they thus decided that Shattuck should try to find evidence of Croatian abuses against Serbs in the Krajina. But Shattuck was appalled at reports that Arkan was once again engaged in his trademark brand of savage "ethnic cleansing," this time targeting Muslims near Banja Luka. When Holbrooke, traveling on to Belgrade later that day, complained about Arkan to Milosevic, Serbia's president shrugged it off as a "peanut issue" that would be taken care of.

It wasn't. By late October, Shattuck was still gravely worried about the situation in Banja Luka. Holbrooke had bluntly told Milosevic that Arkan's atrocities smacked of another Srebrenica, and demanded that Arkan be stopped. When Holbrooke brought Arkan up again over dinner in Belgrade on October 19, Milosevic lashed back with a diatribe, refusing to see Serb war crimes as a legitimate issue and instead telling of the suffering inflicted on Serbs by sanctions and war crimes by Croats and Muslims. Besides that, Milosevic claimed that he had no control over Arkan.

Holbrooke had had the CIA prepare a declassified memorandum to shoot down this implausible claim. As prearranged, Pardew now pounced, producing the CIA memorandum and putting it on the table next to Milosevic. In his memoirs, Holbrooke calls this paper "powerful and incriminating."¹²¹ The CIA noted that Arkan all but certainly had the approval of Serbia's state security services, and might even be acting on its orders. Arkan, the report said, had long had ties to Serbia's Ministry of the Interior. Nor did the CIA believe that these Serbian government agencies could be doing such things without approval from Milosevic himself.

Milosevic recoiled. He refused to touch the memorandum or even look at it, and leaned away from it. Pardew left the paper for him. A Milosevic aide told Pardew that he had forgotten something. He hadn't, Pardew said. Milosevic could have it.

Hard-pressed both by NATO's bombing and by Bosnian and Croatian forces, the Bosnian Serbs capitulated. Holbrooke brokered a cease-fire, which was signed by Milosevic—and Karadzic, under Milosevic's watchful eye. On October 5, Izetbegovic refused to sign it because of the presence of the despised Bosnian Serbs' signatures. He signed a photocopy with those signatures taken off.¹²² By then, American diplomats thought that Milosevic was sure that he had Karadzic and Mladic in his pocket.

DAYTON AND THE HAGUE

The next step was a November peace conference, to be held at Wright-Patterson Air Force Base in Dayton, Ohio. There were three key issues for The Hague, each of which will be discussed in turn below. First, what role would Karadzic and Mladic play at the talks? Second, what would the Dayton accords say about the arrest and marginalization of war criminals? And third, what could the tribunal do to make sure it would not be bargained away during the talks?

Who Speaks for Pale?

The Milosevic strategy meant that Karadzic and Mladic were not needed at Dayton. Still, there were some indications—most dramatically, Holbrooke's and then Hill's meetings with Karadzic—that the Americans were prepared to do a limited amount of business with indicted war criminals if that would serve the interests of a peace settlement. On September 8, Christopher said he had not ruled out dealing with Karadzic and Mladic, despite their indictments. "There are some practical logistical problems that might arise in that situation," Christopher publicly admitted. "But we recognize we need to deal—with respect to finding a peace settlement—with the leaders of the Bosnian Serbs as well as the leaders of Serbia. And so, we have not ruled out dealing with them."¹²³ (A State Department lawyer working on ex-Yugoslavia went one better: "Conceivably, legally, you can negotiate with these guys if they're in jail.")

Right before Dayton, Holbrooke reminded journalists that World War II humanitarians negotiated with Himmler.¹²⁴ According to one senior American diplomat who worked on Dayton and the talks preceding it, Holbrooke briefly considered giving Karadzic and Mladic some role—presumably from overseas—if that would help the talks. If that is true, Holbrooke must have quickly ruled out the idea. What would happen if Karadzic came to America? “We’d throw him in jail,” said a senior American official. Would Karadzic play any role? If he did, this official said, he would have to play it “over the telephone.”¹²⁵

But Milosevic was vital, and could not be kept at arm’s length, let alone branded as a war criminal. Holbrooke was worried about Milosevic’s dark record, and particularly that damning evidence would surface *during* Dayton. That would make it harder to continue to rely on Milosevic. Early in Dayton, the State Department’s intelligence wing (INR) filed a report which concluded that American intelligence had no hard evidence implicating Milosevic. Two 1993 reports by INR had drawn the same conclusions.

The Americans had another headache. When the site for the talks was being chosen, Albright had not liked the prospect of letting war crimes suspects like Milosevic and the Bosnian Serb delegates onto American soil. Karadzic, visiting New York in 1993, had been slapped with a lawsuit for wartime atrocities by Bosnian plaintiffs under an American statute, and the State Department’s legal staff worried that the same thing might happen to Milosevic and some of the Bosnian Serb delegates. According to State Department memorandums, Milosevic, who craved a whiff of Manhattan air, would run less risk of getting sued if he hid out at Wright-Patterson Air Force Base.

Unaware that the CIA seemed not to have the goods on him, Milosevic was particularly sensitive about press reports on Serb war crimes. Here, the Americans showed signs of distinct ambivalence about covering for him. Shattuck continued to highlight the war crimes issue by traveling around Bosnia, heading off to Banja Luka again on November 9. Before Dayton, Holbrooke had publicly announced that the State Department was helping reporters trying to reconstruct the events at Srebrenica. On the eve of Dayton, both *The New York Times* and *The Washington Post* had printed “take-outs” on Srebrenica, huge and damning pieces detailing the slaughter. Stung, at Dayton, Milosevic rumbled about a press conspiracy. On November 3, *The New York Times* again drew Milosevic’s fire for a piece about Goldstone’s insistence that any peace accords include provisions for turning over war crimes suspects. This time, when Milosevic

complained to the Americans, Holbrooke told Milosevic that the American government had not leaked the offending story.

But the bottom line was the Milosevic strategy. American officials privately pointed out that Milosevic was the elected leader of Serbia. The tribunal, a State Department official said, had “accidentally served a political purpose: it isolated Karadzic and left us with Sloba.” A senior British official says, “Milosevic was not just prepared to speak for the Bosnian Serbs, he was determined to do so.” Although Milosevic’s lies angered Holbrooke, the Milosevic strategy stuck. When the Bosnian Serb delegation resisted compromise on the proposed map, Holbrooke had his team freeze out the Bosnian Serbs. (In an eerie note of solicitude for his Bosnian Serb rivals, Milosevic asked for Mladic’s hometown to be included in Republika Srpska, the Serb entity in Bosnia.) In the end, the Bosnian Serb delegates were stunned when they saw the deal Milosevic had cut for them. The Americans briefly panicked when they noticed there was no Bosnian Serb signature on the Dayton accords. Milosevic laughed this off as “bullshit” and promptly got the signatures—including Karadzic’s.¹²⁶ Karadzic did not come to Dayton; he was not needed.

Not Hunting War Criminals

Most of the crucial decisions about what American soldiers would do to arrest Bosnia’s war criminals were made *before* the delegations arrived in Dayton. The White House and the Pentagon were reluctant to make arrests, animated by a sense of how unpopular a vigorous Bosnia mission would be among most Americans. In 1995, on the eve of Dayton, Dick Morris says he did a poll for Clinton that asked Americans their opinion on seven or eight tasks that American soldiers might be called upon to do in Bosnia, like disarming the Bosnian Serbs and repatriating refugees. “The arrest of war criminals was the one that they most opposed using American troops for,” says Morris, “I think probably because of the heritage of Somalia, hunting for the bad guy [Aideed].” Morris wanted Clinton to assure the American public that “we’re not going to be rummaging around in the mountains looking for war criminals.” Clinton, told of the poll results, said that America would not do that. “He was quite adamant,” says Morris.

Morris thinks that Bosnia’s war criminals were never “well enough known for them to be hated.” This is in stark contrast to bitter public awareness after World Wars I and II. Morris, sounding a bit like the topic was the New Hampshire primary, reckons Karadzic only had 20 percent

name recognition, as against a presumed 100 percent for Saddam Hussein. "I don't think that the public ever really got that Karadzic was a son of a bitch," Morris says. "Because he wasn't a head of state, just a general, I think most people didn't know the name." (As if to underscore his point, Morris is confusing Karadzic with Mladic, who was the general.¹²⁷)

The Republican-led Congress, which Clinton had once called "the most isolationist Congress since the 1930s," dreaded American casualties. This prompted Perry and Shalikashvili to announce that their soldiers would wrap up their Bosnia mission in a year. Holbrooke notes that 70 percent of Americans did not want American troops in Bosnia at all.¹²⁸

The military did not want this mission, and wanted to keep its responsibilities to a minimum.¹²⁹ Christopher says, "So this was basically State pushing for more responsibility than the Pentagon was prepared to take, and lower echelons of the Pentagon were very unenthusiastic." A week before Dayton, according to Holbrooke's memoirs, the military did not even want NATO's Implementation Force (IFOR) to be deployed in Bosnian Serb territory or on Bosnia's international borders, and they only wanted to "encourage" the parties to withdraw their heavy weapons. Nor did the military want IFOR to have the authority to investigate war crimes, react to "over the horizon" reported attacks on international workers, or respond to major human rights violations. Even the International Police Task Force (IPTF) was to be denied arrest powers. Finally, Holbrooke writes, "the Pentagon opposed any mandate or obligation to arrest indicted war criminals. Needless to say, I disagreed."¹³⁰

On October 25, Holbrooke writes, at a White House meeting, the Pentagon and a reluctant State Department agreed that IFOR would not be responsible for arresting war criminals.¹³¹ Shalikashvili retreated slightly from this stand in a second White House meeting on October 27: "[W]e do not wish to be obligated to arrest war criminals, but we will accept the authority to arrest them if we get the chance."¹³² This was evidently not much more than a fig leaf over the Pentagon's basic unwillingness to arrest war criminals.

On October 31, the American delegation had its final White House meeting with Clinton and Gore before departing for Dayton. Clinton, in Holbrooke's account, was focused on American soldiers, sobered by both Somalia and the impending decision to send troops into Bosnia. Holbrooke made a last-ditch plea on Karadzic and Mladic:

I said that there was one critical issue I had to raise, even though it was difficult. "If we are going to create a real peace rather than an uneasy

cease-fire," I said, "Karadzic and Mladic will have to be captured. This is not simply a question of justice but also of peace. If they are not captured, no peace agreement we create in Dayton can succeed." There was silence at the Cabinet table.¹³³

That silence was, presumably, a final endorsement for a weak arrests policy.

The Bosnian delegation at Dayton did not realize that American policy on war criminals was in its essence already set. The American and European delegations came together to pressure the Bosnians, a process Sacirbey, then Bosnia's foreign minister, describes as "kind of like pissing on each other's hands and saying we're cleaning our hands."

According to members of Bosnia's delegation, Bosnia proposed putting eight points about war criminals in the peace accords and the Bosnian constitution: explicit provisions that the parties would have to arrest and extradite war criminals; automatic sanctions for noncompliance; and mechanisms to purge war crimes suspects from the police, the military, and officeholders. Holbrooke supported the idea but was overruled by Washington, which saw this as mission creep.¹³⁴ Although the Americans, with Holbrooke's support, accepted some of Bosnia's other suggestions, IFOR's mandate was not on the table. Sacirbey, who handled the war crimes portfolio for Bosnia at Dayton, says that Holbrooke simply told him that Bosnia's proposal was "impossible." "The U.S. figured, we've got to convince the Serbs across the parking lot to sign onto it," says Paul Williams, a former State Department official serving as legal advisor to the Bosnian delegation. The issue of war criminals, the Bosnians were told, was "a deal-breaker."

Instead, the Americans put forward the Pentagon's preferred language: IFOR would not have to arrest war criminals, but it would have the authority to do so. This was a huge step back from what the Bosnians had proposed. Unlike the Bosnians, the Americans did not want to put the war criminals issue in the annex on IFOR.

The American delegation had a tough tactic to lean on the reluctant (and squabbling) Bosnians. According to Sacirbey and Bosnian officials at Dayton, an American diplomat told the Bosnians that Goldstone had approved this language. "That took the wind out of the Bosnians' sails," says Williams. The Bosnians unhappily agreed to the American proposal. Told of this incident later, Goldstone was appalled. "Absolutely not," he said. "120 percent false. I was not asked and I would not consent." "We never signed off on anything," says Blewitt. "That's a lie."

As ever, America emphasized protecting American lives. Christopher said that NATO would not send in peacekeepers if Karadzic and Mladic were still in power, posing a risk to American troops—a baffling position that the American negotiators quickly backed away from. Holbrooke insisted to Milosevic that Bosnian Serb forces free David Rohde, a *Christian Science Monitor* reporter captured while discovering evidence of the Srebrenica massacres,¹³⁵ and even got Christopher to write Milosevic a stern letter demanding Rohde's release.

The Europeans were even less enthusiastic. According to Williams, Bildt told the Bosnians not to mention war criminals, figuring that Milosevic would never accept it. Britain and France did not want sanctions over war criminals, Williams says. Russia tried to edit the annex that covered IFOR to water down the force's mandate. According to Goldstone, Russia "vigorously opposed" an American suggestion at Dayton that IFOR be obliged to arrest the war criminals.¹³⁶

Worst of all was Milosevic's modest proposal for Karadzic. Milosevic merely wanted to trounce him in elections, by pressing the many Bosnian Serb refugees in Belgrade to vote against Karadzic. On November 3, Milosevic told Holbrooke that excluding Karadzic from Bosnian elections would only make him a martyr. Holbrooke shot Milosevic's idea down.

A few days before Dayton was initialed, Goldstone had no illusions that IFOR would track down war criminals. How could Mladic end up in jail? "The only two possibilities are, one, is he voluntarily gives himself up," Goldstone said. "The other scenario is it's going to become in the political interests of whoever's running the part of the former Yugoslavia he's in to have him turned over. Or I suppose, third, he can be a pariah in a self-imposed prison." Goldstone did not mention IFOR at all.

The View from The Hague

As Dayton started, Goldstone and Blewitt seemed exhausted and worn down. Watching Dayton from the cheap seats in The Hague, the tribunal's staff worried that the tribunal might be bargained away as a sweetener to a peace deal.

Amnesties had long been a cause of concern in The Hague. In November 1993, Albright said that America was against amnesties. But when Carter brokered a cease-fire with Karadzic and Mladic in December 1994, tribunal officials worried that Carter might throw amnesties into the deal. Going into Dayton, Holbrooke said, "We are not going to compromise the war tribunal's proceedings."¹³⁷ Did Cassese worry about amnes-

ties? "Yes. Of course. Before Dayton I was worried and Goldstone and I decided to take some steps and to approach some of the leading powers to impress upon them the idea that amnesty would be unacceptable. And they said, 'Yes, we fully agree.'" A senior American official said, "The war crimes tribunal isn't going to mess with our peace talks; we're not going to mess with the war crimes tribunal." As Yehuda Mirsky, Shattuck's spokesman, put it during Dayton, "In this building there is a consensus that the tribunal won't be bargained away in a vulgar way."

That of course left open the possibility of undermining the tribunal in nonvulgar ways. Goldstone insisted that the tribunal be a part of any settlement. First, at his most lawyerly, Goldstone said, "We're a creature of the Security Council. It's an apolitical mandate. We have to do our job. I protect the professional interests of the tribunal." Second, more practically, he argued, "I don't think any 'peace'—and I say it in quotation marks—that's established at the expense of justice will lead to a long-term resolution."

At the start of Dayton, Goldstone wrote to Albright, his best ally, asking that America make the surrender of war criminals a part of any peace accord.¹³⁸ Goldstone said he had received American assurances that there would be no amnesties. On November 7, Cassese pointedly gave a speech to the UN General Assembly, complaining that forty-one of forty-three indicted suspects were believed to be in Serbia or Bosnian Serb territory. "Our tribunal is like a giant who has no arms and legs," Cassese said. "To walk and work, he needs artificial limbs. These artificial limbs are the state authorities."¹³⁹

When rumors reached The Hague from Belgrade that Karadzic and Mladic might be amnestied, Goldstone uncharacteristically exploded in public: "What politicians have the moral, legal or political right to forgive people charged with genocide and crimes against humanity—for the deaths of tens of thousands of people—without consulting the victims? I just find it abhorrent." If the world community backed a deal that let Milosevic's regime shelter Karadzic and Mladic, Goldstone warned, "then all of us at the tribunal would question whether it was worthwhile pursuing the work."¹⁴⁰

The tribunal issued three major indictments during the Dayton conference, aiming at senior figures. This was what Holbrooke had feared, although the indictments did not derail the Milosevic strategy. Sacirbey says he had been tipped off—he refuses to say by whom—that these indictments were coming, and was anticipating them as a way of raising the profile of the war criminals issue. First, on November 7, the tribunal

indicted three senior JNA officers—Mile Mrksic, Miroslav Radic, and Veselin Sljivancanin—for command responsibility in the 1991 Vukovar hospital massacre that had allegedly left the victims in the Ovchara mass grave.¹⁴¹ The first indictment aiming at Serbia proper, this was a shot directly across Milosevic's bow.

Next, on November 10, The Hague indicted a group of Bosnian Croats—including Bosnian Croat leader Dario Kordic and his military chief Tihomir Blaskic—for atrocities against Muslims in 1993 in central Bosnia's Lasva Valley.¹⁴² The tribunal tried to get these indictments out before Dayton, Blewitt says, to defuse accusations of anti-Serb bias. "Tudjman in particular was pissed off," recalls Sacirbey. Peter Galbraith, then the American ambassador to Croatia, says, "The immediate impact of the Lasva Valley ones was that Tudjman transferred, removed Blaskic from being head of the HVO [the Bosnian Croat militia] and made him inspector of the army." This was reported in the press as a promotion,¹⁴³ but Galbraith differs: "Since when is being commander of your own army a less important job than *inspector* of an army?" Galbraith says. "It was clearly President Tudjman's idea of getting him out of the way." Still, on Galbraith's account, at best, Tudjman's idea of compliance with the tribunal was to kick his indicted officer upstairs.¹⁴⁴

Finally, on November 16, the tribunal issued a new indictment against Karadzic and Mladic for genocide, crimes against humanity, and war crimes at Srebrenica.¹⁴⁵ Goldstone staffers say they hurried to have the second Karadzic-Mladic indictment ready for Dayton. Was this Goldstone's way of reminding Dayton's negotiators of The Hague? "Not at all," Goldstone said. Purely coincidental? "[I]t was really happenstance," he said. "We've issued indictments when they've been ready." But Blewitt, Goldstone's deputy prosecutor, has said that the Dayton indictments were timed to remind negotiators of the war criminals and to make it harder to dispose of the tribunal.¹⁴⁶ It was coincidental that the indictments were largely ready then, says Blewitt, but "we wanted to make sure that we were going to be part of the Dayton solution, whatever came out of it, that we were going to be part of the deal."

To get America's attention, on November 15 and 16, Goldstone made the rounds in Washington, meeting with Lake, Perry, and Shattuck, as well as CIA director John Deutch, and Strobe Talbott, deputy secretary of state. With Perry, Lake, and Deutch, Goldstone focused on intelligence cooperation, a crucial issue. Someone had leaked a letter from Goldstone complaining about the "disappointing" quality of the American intelligence he got. Goldstone wanted information about alleged conver-

sations between Mladic and JNA chief of staff Momcilo Perisic during the Srebrenica massacres, which could implicate Milosevic in Srebrenica.¹⁴⁷ Still, after his meetings in Washington, Goldstone said he got "[e]verything and more than I could have expected."

Goldstone says he also talked to Shattuck and Talbott about Dayton. After the Washington meetings, Goldstone said he was "not privy to the negotiations nor would I wish to be." Might there be amnesties? "You can rule that out absolutely." The Americans, Goldstone said, agreed that "the parties should be required to cooperate," including turning over suspects. But Holbrooke was "acting very much in the political domain," and Goldstone knew that "the interests of justice may be relegated to a secondary status in the talks."

The Americans did sound a number of reminders at Dayton that The Hague was of some importance. Principles aside, Holbrooke understood the practical usefulness of The Hague, as a way of cementing the Milosevic strategy. And the war crimes issue, Shattuck has noted, was a nonnegotiable demand for Christopher. In his opening speech on November 1, Christopher made human rights and the punishment of war crimes one of four basic principles for a settlement. Earlier the same day, Christopher had personally raised the issue of human rights with Milosevic—reminding Milosevic that his good reputation was by no means assured. And on November 10, Christopher again asked Milosevic to cooperate with The Hague. This time, Christopher reiterated his public comment that America might not send IFOR troops so long as Karadzic and Mladic were in power. Milosevic seemed hesitant to promise that they would be deposed. Christopher urged Milosevic to find ways to go around the two indicted leaders, as done in the Patriarch letter.

In the end, Dayton's text was either opaque or minimalist. "The references to war criminals in Dayton are glancing," says Major General William Nash, the American commander of multinational IFOR forces. "At best." The parties were to "cooperate fully" with the tribunal,¹⁴⁸ including with evidence-gathering and arrests.¹⁴⁹ Indicted persons were to be barred from public office in Bosnia,¹⁵⁰ despite Milosevic's efforts. And IFOR, as America had wanted, was given the right "to monitor and help ensure compliance" with Dayton, but was under no obligation to arrest indicted war criminals.¹⁵¹

Finally, just before the gala signing ceremony in Paris, on December 14, Clinton himself issued a top-level but rather vague private warning to Milosevic, Tudjman, and Izetbegovic of the importance of letting the tribunal do its work. Clinton also made a point of reassuring Izetbe-

govic—who desperately wanted to get rid of Karadzic and Mladic—that elections would be a way of getting war crimes suspects out of Bosnia's political life.

In Paris, Milosevic also got a final payoff for his part in the Milosevic strategy. Clinton briefly met with each of the three presidents, and Milosevic evidently reveled in his few moments of face-time. (The White House did not, trying to divert press attention from the one-on-one meeting between the two men.) Clinton told Milosevic that Milosevic would have to continue to lean on the Bosnian Serbs to make Dayton work, and that Dayton would not have been possible without him. Very possibly, but it would not have been necessary either.

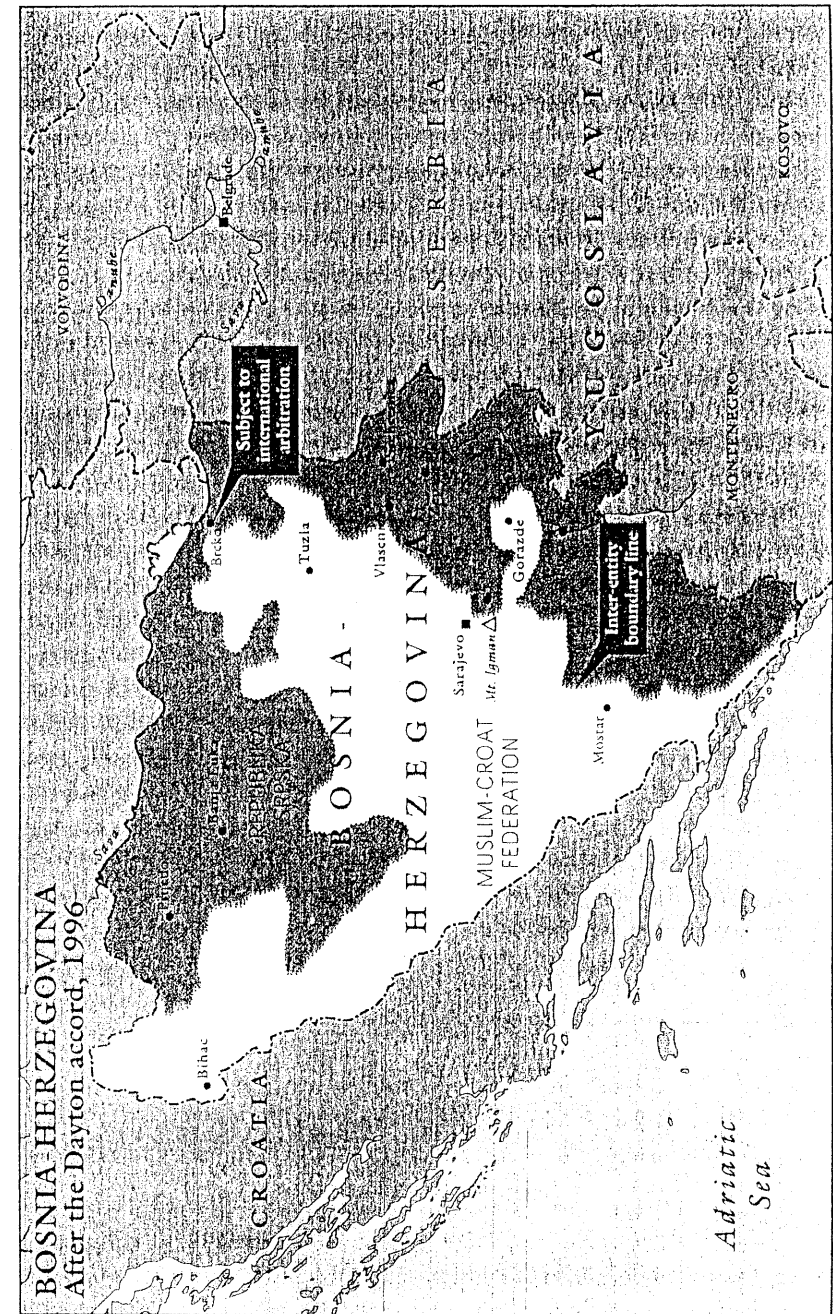
PEACE AND THE SEARCH FOR JUSTICE

Pax Americana

"This NATO force in Bosnia will be the biggest, toughest, and the meanest dog in town," promised Perry. Starting on December 16, some 60,000 IFOR troops moved into Bosnia, bringing a sudden peace. The American troops, black and white and Latino, were a walking advertisement for multiethnicity.

At Dayton, Izetbegovic had once told Perry that the Bosnian Serbs, like the defeated Nazis, should have terms imposed upon them; Perry reminded Izetbegovic that Bosnia had not defeated the Serb forces. But NATO, of course, had, even though the victors politely called themselves a peacekeeping force. Before the arrival of IFOR, it had been easy to say that The Hague could never approximate Nuremberg: no victor, no victor's justice. But now all that had changed, with even the Bosnian Serbs cowed.¹⁵² By common consensus, the implementation of the military side of the Dayton accords went off with remarkable efficiency. It was the civilian side that lagged. And one critical component of the civilian side was the question of war criminals.

If there was ever a moment for arresting the indicted war criminals, the arrival of IFOR was it. But IFOR's policy on apprehending war criminals had been set by a White House that was scrupulous about avoiding casualties (and was aware of the upcoming presidential election).¹⁵³ This had not been America's war, and thus the retributive desires of Arthur Balfour or Henry Morgenthau Jr. were quite alien to Clinton's White



House. The Europeans, whose soldiers had been there for years, were already sick of ex-Yugoslavia and dreaded angry mobs and guerrilla attacks.

Until July 1997, despite fierce criticism from the press and human rights activists, IFOR stuck with its policy: it would arrest war criminals if its soldiers stumbled upon them in the course of their regular peacekeeping duties, but IFOR would not seek out the men on The Hague's list. Even Christopher says that "the execution left many of us disappointed. We thought there were opportunities that were simply not seized." Goldstone was harsher. "We'll arrest people when they come into our laps," he said in 1996. "Anybody who made that policy either was stupid or not serious. I'm not sure which it was. Because it couldn't have really been considered that arrests would take place with that policy. Not a single arrest has taken place, and not one, in my view, is going to take place."

By the time Goldstone left the tribunal in October 1996, IFOR had indeed not made a single arrest. Nash recalls, "[W]e had so much going on at the time that our energy level in the early days was focused on those military tasks *specified* in Dayton that were clear and articulated. And we concentrated on that. We were trying to get the armies back in the barracks, get the equipment stored." According to a senior Pentagon official, the Joint Chiefs were briefed on Dayton's military provisions (known as Annex I-A), but not on going after war criminals. NATO military commanders felt that their orders from their political bosses had been perfectly clear. Nash says that he had clear instructions from NATO's member states, with "political guidance that was very specific in its non-pursuit provisions, of the instructions to the military command."

This suited the military. As a senior Pentagon official put it,

There's a resistance to mission creep. There's a resistance to policing. . . . You don't want to have another Somalia, especially when public opinion is dicey anyway on the whole Bosnia mission. DoD [Department of Defense] doesn't want to send soldiers on a mission they're not trained for. If you're Clinton, do you start taking ten casualties a day and go full-bore after Karadzic and Mladic? And then have Congress say we weren't so sold on this in the first place?

Another senior American military official later recalled, "If you did [arrests of Karadzic and Mladic] in January 1996, then you've taken on belligerent status. Then you've got a guerrilla war. There'd be sniping and

bombs." To Holbrooke's chagrin, Admiral Leighton Smith, the American IFOR commander, went on Pale Television to deny that he had the authority to make arrests.¹⁵⁴

The Europeans also made no secret of their reluctance. A senior British Ministry of Defence official said that Mladic and Karadzic "were surrounded by large numbers of heavily-armed well-trained bodyguards, who were not stupid, who appeared from time to time to our embarrassment in front of the cameras and the media, but always surrounded and in the middle of large numbers of civilians. A major firefight would have resulted in large numbers of casualties of innocent civilians as well as the military personnel." Nobody had the stomach for that. As this British official added, "[B]oth Mladic and Karadzic in terms of Serb public opinion were very important political players, and if IFOR and NATO had been perceived as acting partially particularly against those two individuals, we were genuinely worried about the impact on the broader peace process, the process of reunification and nation-building would be even more difficult." British military officials continued to worry that arresting Karadzic or Mladic would spark reprisals or splinter the Bosnian Serb leadership.¹⁵⁵

Russia, still in the throes of its uncertain transition to liberal democracy, was overtly obstructionist. Russian nationalist politicians professed traditional affinities for the Serbs, as fellow Orthodox Slavs.¹⁵⁶ The Hague was seen as being as much of an American show as Dayton and was therefore resented. On December 11, 1995, Andrei Kozyrev, Russia's foreign minister, had said that Karadzic and Mladic's indictments should be frozen.¹⁵⁷ As Cassese recalls, "[T]he Russian ambassador came to see me on a Sunday [December 11] with instructions from Kozyrev asking whether it was technically and legally possible to freeze those arrest warrants, and I said, no, it is impossible." The two called Goldstone to confirm that stance. Goldstone says he got "a telephone call from the Russian ambassador. It was a request and it was very very promptly refused."

Karadzic, though stigmatized by his indictment and barred under Dayton from holding office, proved quite capable of fulminating against IFOR and Muslims, even without shuttling around Geneva and New York. Returning from Dayton in triumph on November 22, 1995, Holbrooke met with Clinton and Gore at the White House and warned that the capture of Karadzic and Mladic was "the most critical issue that was not resolved at Dayton." Holbrooke writes: "I repeated my view that if the two men, particularly Karadzic, the founder and leader of a still unrepentant

separatist movement, remained at large, full implementation of the agreement would be impossible. The President concurred, saying, 'It is best to remove both men.' Without giving a direct instruction, he asked the military to consider the issue."¹⁵⁸

Soon after, Holbrooke wrote to Milosevic to demand that Milosevic rein in the Pale Serbs. Holbrooke later wrote: "[O]n the future of Karadzic and Mladic, Milosevic remained adamant; he could not, and would not, deliver the two men to an international tribunal."¹⁵⁹ This was an overt Serbian violation of the Dayton accords, even before it had been formally signed in Paris.

A Wrong Turn

With so many former antagonists in close proximity, it was almost inevitable that perpetrators and victims would meet, and not amicably. On January 30, 1996, Djordje Djukic, a general in the Bosnian Serb Army and a Mladic crony, and Aleksa Krsmanovic, a Bosnian Serb Army colonel, took a wrong turn and stumbled into the hands of Bosnian police in Sarajevo. Djukic had been the head of logistics for the Bosnian Serb Army, and Krsmanovic had done the same for the Sarajevo area—logistics that facilitated war crimes like the Sarajevo sniping campaign. As such, even though they had not been indicted by The Hague, the Bosnian government named them as suspected major war criminals and started preparations for a trial in a Bosnian courtroom. Djukic "really was the conscious presence of Serbia in Bosnia," Sacirbey later recalled. "He knew how logistics were being directed and where they came from."

Starved for suspects in custody, and presumably leery of a trial in Bosnia's courts, Goldstone quickly issued an arrest warrant for Djukic and Krsmanovic. The West did not appreciate The Hague's interference. "Justice Goldstone complicated matters considerably," Holbrooke writes in his memoirs.¹⁶⁰ IFOR was scandalized. "[M]y first personal reaction was that it was going to be very hard to conduct business," says Nash. "I thought Judge Goldstone made a very serious mistake in having a nonindicted individual brought to The Hague."

Milosevic insisted that Djukic and Krsmanovic be freed. Mladic publicly ordered the Bosnian Serb Army to end cooperation with IFOR. At the time, this looked like a moment of great danger, but this was more show than anything else. "We never stopped talking," Nash later admitted. "At my level, I did not hold any meetings, because with me came the press and that type of stuff, and they wouldn't meet with me. My colonels,

both at the brigade and battalion levels, met with VRS [Bosnian Serb Army] counterparts near daily throughout that two- or three-week period that they broke off relations with IFOR. We kept up day-to-day at the low level and we kept doing our business." Holbrooke flew to Belgrade, where Milosevic told him that Djukic was slowly dying of cancer, and that both captives were "simple soldiers" who should be freed at once.¹⁶¹

To NATO, the Djukic arrest was an unwelcome sneak preview of what might happen if IFOR moved against the war criminals. The Pentagon worried that Mladic would kidnap American soldiers. Was it worth going after Djukic even if that meant an IFOR soldier from Nebraska got killed? "Absolutely," Goldstone said. "Because not arresting them can have the same effect. Who's going to decide? It's a question of choosing whose crystal ball you're going to look into." As it turned out, it was not Americans who bore the brunt of Serb anger, but passengers on a bus in the Sarajevo suburb of Ilidza, who were shot at in reprisal sniping.

Everyone knew that keeping Djukic and Krsmanovic in a Bosnian jail was dangerous. So French IFOR troops whisked Djukic and Krsmanovic out of their Sarajevo jail and into American helicopters bound for The Hague. As Holbrooke writes, not without irritation,

they were held for months by Goldstone before the charges against Colonel Krsmanovic were dropped and General Djukic, now close to death from cancer, was released.

Christopher and I were greatly disturbed by this incident. The seizure of the two men, neither of whom were ever indicted, had disrupted the implementation process and set a bad precedent for the future. We determined to try to prevent any repetition of such an incident before it became a pattern.¹⁶²

Actually, although Krsmanovic was never charged, The Hague hastily indicted Djukic.¹⁶³ He would die of cancer in May.

On February 18, the Dayton signatories established "Rules of the Road" that said that suspects could only be apprehended if The Hague had previously reviewed a warrant. But Bosnians interpreted the Djukic affair differently: if IFOR's foot-dragging continued, the Bosnian government might take matters into its own hands.

IFOR versus ICTY

NATO's unwillingness to arrest war criminals was a constant sore point with The Hague and the Bosnian government. An IFOR commander

points out that his troops went into Bosnia without its officers having lists of who the indicted war criminals were, or their pictures, or instructions for the troops; those steps were not taken until well into January 1996. IFOR, blaming The Hague for providing shoddy information, complained that it had photographs of only 15 of the 52 suspects, many of them indistinct or blurry. IFOR's "Wanted" poster had pictures of only 17 of the 52 suspects, many of them hopelessly indistinct.

As IFOR and the Bosnian Serb Army (VRS) sized each other up, there were real risks of confrontation. A senior American military officer says, "[W]e should have put a tank battalion in Pale, day one." IFOR and human rights officials say there was at least one major face-off at Vlasenica around April—which, according to these sources, may well have been because the Serbs thought IFOR was there to arrest Mladic. At a road checkpoint, a Serb officer belligerently told an American lieutenant to move his platoon. The American refused and moved in more forces, checking in with both his company and battalion commanders. Nash recalls, "[W]e just said, 'You want to fight? Today's a good time, this is a good place.'" The Serb forces backed down. In the background of this—possibly explaining the VRS's strong reaction—were rumors that Mladic's black Mercedes had been moving along that road in recent weeks. During the confrontation, IFOR had scouts out looking for a black Mercedes.¹⁶⁴

Human Rights Watch wrote, "[I]t is increasingly evident that IFOR soldiers are making every effort not to 'encounter' the two most notorious of indicted persons," Karadzic and Mladic.¹⁶⁵ More obliquely, a senior American official says, "On the one hand, I agreed that our military were not a police force, but on the other hand, under the rules of engagement, they damn well ought to be picking up anybody they came in contact with. There were a number of times on which I recall pressing them to implement those rules of engagement as vigorously as possible." American IFOR troops were accused of keeping away from Han Pijesak, Mladic's mountain headquarters, in the American zone,¹⁶⁶ although IFOR officials say they had close to a full tank battalion there and kept the area under surveillance.

When enterprising journalists went looking, they managed to find many of the indicted men.¹⁶⁷ The foreign press corps in Sarajevo kept up a drumbeat on the issue, aggressively asking IFOR briefers why the war crimes suspects were still at large. Perversely enough, these kinds of embarrassing stories in the press may have sometimes been welcomed in

the White House. "I frankly regarded that as positive negative publicity," says Morris. "People saw that we weren't doing too much, and that helped views of the mission."

IFOR was also reluctant to be dragged into war crimes investigations, most notably the excavation of mass graves. These digs were a grisly mix of sophisticated medical detective work and cruder steps. The rough location of the sites was found by satellite photography and survivor accounts; but to find the precise spot, investigators would sometimes simply drive a long metal probe into the ground, pull it back up, and smell the tip for the methane stench of rotting corpses. Rows of investigators had to comb the fields for every scrap of evidence. This kind of inch-by-inch searching was not exactly the first thing one wanted to do in a countryside that might have land mines. The Serb authorities took an obvious interest in the digs. When tribunal investigators went to the Nova Kasaba field, near Srebrenica, where some of the mass executions took place, a crowd of Serb military men showed up, too. IFOR preferred not to expose its soldiers to fields that might be hiding mines, nor to antagonize the Bosnian Serbs by digging up evidence of their worst atrocities.¹⁶⁸

The mass graves became a flashpoint between Goldstone, Albright, and Shattuck on the one hand, and IFOR on the other. "Initially we did not have enough forces in January and February to provide guarding of sites," says Nash. On January 21, Shattuck tried to force the issue by visiting mass grave sites around Srebrenica. Smith immediately publicly rebuffed Shattuck: "NATO is not, I repeat, NATO is not going to provide specific security, or in other words guarantee security, for teams investigating these grave sites." Nash says that when public officials "are making public statements that we should do certain things, and trying to put extraordinary pressure on the military to take independent actions in line with their quoted views, I don't think that's helpful."

Albright kept pushing. Joining tribunal investigators at Pilica, near Srebrenica, in March, she threw down a gauntlet: "Mladic and Karadzic need to know that their days of roaming around are numbered."¹⁶⁹ By then, a senior IFOR official says, IFOR had drawn up lists of sites to check several times daily, personally and through remote technology. The investigators proved, from the military's point of view, simply a pain to work with. As one IFOR commander complains:

There was also a lack of clarity on which sites the tribunal was interested in. And they had a lack of specificity as to *this* site, *this* piece of ground

right here, this road junction intersection or this soccer field are the fields and we want them watched. And they could not produce a list, and a location. . . . [T]hey were very difficult to work with, because they were not well coordinated in their efforts. They didn't know exactly where they wanted to go, they wanted to kind of explore. They would hear a rumor and suddenly decide they wanted to go check out an area. We'd explain to them, we don't operate on an ad hoc basis, that if they want to go look at an area, we needed about 24 hours to brief our soldiers and make a reconnaissance, organize the security, and . . . coordinate with the local police authorities.

In April, when tribunal investigators arrived at Srebrenica, American IFOR commanders refused to clear the sites of land mines, so the tribunal had to turn to a private humanitarian minesweeping organization. On July 7, at Cerska, near Srebrenica, where IFOR feared to tread, mine-sniffing dogs from the Norwegian Peoples Aid rushed in.¹⁷⁰

IFOR ultimately agreed only to provide "area security" for the forensic excavators during the day, but when The Hague's investigators left, IFOR did, too. There was overnight monitoring, but not protection, says a senior IFOR official. In at least one instance, a site was disturbed, although a senior IFOR official says it was only an inch or two of topsoil. Not only were investigators nervous about snipers, but they feared that leaving open mass graves unguarded in Bosnian Serb territory was an invitation to tampering or booby traps. So two American investigators, Bill Haglund and John Gerns, would sleep by the grave, without IFOR protection.¹⁷¹ In August, the UN administration in Eastern Slavonia mineswept the area around the Ovcara mass grave, but with a twenty-ton demining vehicle that trashed the grave site itself.¹⁷²

With the arrival of IFOR, the focus of politicking over the tribunal had shifted away from budgetary issues. But the tribunal still felt underfunded. The budget had grown—about \$11 million in 1994, \$28 million in 1995, and almost \$41 million in 1996—but did not keep pace with the increasingly large caseload. In 1995, France and Britain gave nothing in voluntary contributions, while America gave \$700,000 and eighteen staffers. Even major countries did little for the tribunal if they had soldiers on the ground: Britain sent three staffers, but its voluntary contribution of \$31,700 for video and computer equipment was less than the \$105,000 given by Soros's Open Society Institute or the \$500,000 from the Rockefeller Foundation.¹⁷³ The tribunal remained near the bottom of the list of Western priorities in Bosnia.

Noncompliance

Serb intransigence became an excuse for Croat intransigence, and vice versa. Of the fifty-three men indicted by February, seven were Croats, but Croatia and Bosnian Croat authorities complained that they were being pressured to extradite suspects while Milosevic shielded his three indicted JNA officers. In Vitez, Croats were enraged by the tribunal's indictments of Kordic and other Bosnian Croats. Ivica Rajic, the first Croat indicted by the tribunal, was arrested by Bosnian Croats for separate murders of Croats. He was soon freed, to the anger of American, Bosnian, and tribunal officials, who said this was a violation of Dayton. Kordic, the most prominent Croat suspect, was living in a Zagreb apartment.¹⁷⁴

Karadzic and Mladic were far from intimidated. Mladic brazenly went skiing near Sarajevo in March, telling the television reporters who filmed him that he had no worries of being arrested. Karadzic went to a session of the Bosnian Serb parliament in Pale, with no evident fear of Italian IFOR troops who patrolled Pale.

More than even Mladic, it was Karadzic who attracted the attention of American officials, by undermining Dayton. After lying low when IFOR first arrived, Karadzic soon resurfaced to intimidate Serbs sympathetic to Dayton. "They can't arrest me," Karadzic bragged to reporters. "I am going to travel whenever I feel I need to travel." Holbrooke writes:

Of all the things necessary to achieve our goals in Bosnia, the most important was still the arrest of Radovan Karadzic. . . . As we had told the President and his senior advisers even before Dayton, Karadzic at large was certain to mean Dayton deferred or defeated. Nothing had changed six months later, except that Karadzic was rebuilding his position. While the human-rights community and some members of the State Department, especially John Shattuck and Madeleine Albright, called for action, the military warned of casualties and Serb retaliation if an operation to arrest him took place. They said they would carry it out only if ordered to do so directly by the President; thus if anything went wrong the blame would fall on the civilians who had insisted on the operation, including the President himself. This was a heavy burden to lay on any president, particularly during an election year, and it was hardly surprising that no action was taken to mount, or even plan, an operation against Karadzic in 1996 or 1997.¹⁷⁵

That is, for the first two years of the NATO mission in Bosnia, there was no *planning* of a raid on Karadzic.

By July, the White House had decided to try to get Karadzic out of the political spotlight, but not to actually arrest him. A senior American official says, "My recollection is that NATO was not prepared to mount the force or take the risk to do the things necessary to arrest him, so the next best choice was to get him out of the government." Holbrooke writes, "The Administration's goal was to remove Karadzic from power or significantly weaken him through diplomatic pressure, thus defusing the pressure for a military operation."¹⁷⁶ And a senior IFOR officer was also receptive to the idea of using "all the other means necessary to screw him up," like breaking Karadzic's fabled cigarette and gasoline monopolies. (More cryptically, another senior American diplomat says, "[W]e were looking into a number of alternatives to our troops making arrests." The official adds, "[W]e were looking at getting other folks to do it." The official refused to elaborate.)

Nonmilitary pressure could sometimes have an impact on Serbia and Croatia. Trying to sideline Blaskic by moving the indicted Bosnian Croat military leader into Croatia's army, Tudjman miscalculated. "A lot of diplomatic pressure was brought to bear on the Blaskic case," says Galbraith. "He also was in the Croatian army, he was the inspector of the army, and he was on Croatian soil. So it was easy for the Croatian authorities to make sure that he went." Tripped up by his own machinations, Tudjman tentatively agreed to turn in Blaskic by the end of March.¹⁷⁷ Blaskic resisted, demanding he be put under house arrest, not in the tribunal's jail. On March 30, Perry visited Zagreb, threatening to slash Croatia's international financial and military aid. Finally cowed, Tudjman implausibly announced that Blaskic had volunteered to surrender himself. Because Blaskic was ostensibly going voluntarily, Croatia set no extradition precedent.

Milosevic would not turn over any of the forty-five Serbs still at large,¹⁷⁸ and made it clear that the three suspects in Milosevic's own army could sleep easy. In a surreal scene, one of them—as well as Mladic himself—confidently attended the Belgrade funeral of their fellow indicted suspect, Djukic, who had died of cancer.¹⁷⁹ But Milosevic did agree to turn over two unindicted men to The Hague for questioning: Drazen Erdemovic and Radoslav Kremenovic. Because they were not indicted, Milosevic, like Tudjman, could claim he was not setting a precedent of extradition. Erdemovic—who opportunistically served in Bosnian, Croat (he was a Croat by ethnicity), and Serb forces in Bosnia—claimed to be an unwilling participant in the Srebrenica massacre, forced to kill Muslims or be shot himself.¹⁸⁰ Fearing his former Serb comrades, Erdemovic was

looking to turn himself in to The Hague, and was arrested by Serbian secret police after giving interviews to *Le Figaro* and ABC News.¹⁸¹ Milosevic was on the spot, and this time he reluctantly yielded to American pressure: after a month, Erdemovic was delivered to The Hague.¹⁸²

Bosnia, the government that had the least to account for, gave "fulsome" cooperation, Goldstone said. On March 21, The Hague made its first indictments against suspects under the Bosnian government's control, with Bosnian Serbs as the victims.¹⁸³ In May, Bosnia became the first ex-Yugoslav government to carry out a Hague arrest warrant, arresting two Bosnian Muslims accused of murdering and torturing Serbs at the Celebici camp in 1992. Bosnia had its misgivings about this, and it is possible that if the suspects were more important figures, Bosnia would have been more reluctant. (Two other Celebici suspects, a Bosnian Croat and a Bosnian Muslim, had already been arrested in Vienna and Munich before they were indicted by The Hague.)¹⁸⁴ Ironically, the refusal of Serbia and Republika Srpska (the Serb entity in Bosnia) to cooperate with the tribunal hampered the Celebici indictments: Goldstone had to get Serb witnesses to travel to another country to give evidence. A tribunal that was regularly excoriated in the Serb nationalist press as being anti-Serb found itself with mostly Croats and Muslims in custody.¹⁸⁵

While America explored options other than arresting Karadzic, The Hague did what it could to turn up the heat. On May 7, The Hague opened its first trial, of Dusan Tadic.¹⁸⁶ The Tadic trial's opening was supposed to be a gala media event (so many reporters showed up that they had to work out of two big red tents pitched on the tribunal's front lawn), but things kept going wrong. The tribunal had hoped to make history with rape charges, but they were dropped on the morning the trial started because a witness was afraid to testify in The Hague. The prosecution's opening statement—not even given by Goldstone—was tepid and easily outshone by the defense's Michail Wladimiroff, a prominent Dutch criminal lawyer who elegantly quoted Grotius. One judge mispronounced Balkan terms such as "Ustasha" and "Herzegovina." The first witness, James Gow, a respected academic at King's College, London, put the press to sleep and scared off live television coverage; years later, the mere mention of his erudite performance would make prosecutors groan. (Tadic, during his trial, would paint a gory watercolor titled "Dr Gow + Serbs.") And it was impossible to forget that Tadic, a pawn in the Bosnian Serb hierarchy, was nobody's idea of a major suspect.

Goldstone kept lobbying NATO, and America in particular.¹⁸⁷ On May 20, he met with Christopher, Perry, and Shalikashvili, urging them to arrest Karadzic, Mladic, and the other fugitives. Goldstone says that Christopher and Shalikashvili "made it quite clear that the policy wasn't going to be changed." Christopher's recollections are more placid: "The meetings I had with him were relatively brief, they were not detailed, they basically were a laying-on of hands, expressing appreciation for what he was doing." When Goldstone returned to The Hague, he for the first time publicly vented his frustration at IFOR. "Unless some of those indicted people become suicidal," Goldstone told *The New York Times*, "it's not going to happen."¹⁸⁸ Cassese also spoke out, suggesting reimposition of full sanctions against the Bosnian Serbs and Serbia.

In June, The Hague indicted eight Bosnian Serb paramilitary officers for the rape and enslavement of Bosnian Muslim women at the Foca prison camp in 1992¹⁸⁹—the first international rape charges since Tokyo and the first time that crimes of sexual assault were listed as war crimes in their own right. There is no sign that this got NATO's attention.

Finally, aiming higher than the lowly Tadic, in June and July the tribunal convened a special session about Karadzic and Mladic under its Rule 61, which allows a public hearing to air evidence and issue a new arrest warrant. Some of the urgency to dig up the Srebrenica mass grave sites was due to the deadline of the Rule 61 hearing. For over a week, the court heard details of Mladic's direct role in Srebrenica's fall, and was riveted by testimony by Erdemovic and by an anonymous survivor of the massacre.

None of this changed any minds in Washington. The White House hoped Bosnian elections, scheduled for September 14, would marginalize Karadzic's loyalists. Bosnia complained that there could be no fair elections while the war criminals were at large to intimidate voters.

With the White House worried that Milosevic would not sideline Karadzic and Mladic after all, Holbrooke flew to Bosnia and Serbia on another shuttle. On July 6, Smith had said publicly that IFOR was patrolling in Pale, but "[t]hat's as far down that path as I want to go. I do not have orders to go out and hunt down Dr. Karadzic." On July 18, in Belgrade, Holbrooke demanded that Karadzic leave Bosnia and that the Serbs cooperate with the tribunal.¹⁹⁰ Momcilo Krajisnik, a Bosnian Serb leader, refused to send Karadzic out of Bosnia. "If we won't do it with 60,000 troops in the country," Holbrooke told *The New York Times* afterward, "why would Milosevic do it and launch a Serb civil war?"¹⁹¹ They settled

on having Karadzic resign as president of Republika Srpska and of his Serb nationalist political party, and on keeping Karadzic's image off television screens and campaign posters. All that was needed was Karadzic's signature, and to get it, Milosevic had no difficulty finding the man that IFOR kept missing. Holbrooke got what the American government wanted: the pressure to arrest Karadzic was off for the rest of year.¹⁹²

The Bosnians fumed. Before Holbrooke's shuttle, Ejup Ganic, Bosnia's vice president, had threatened to pull out of the elections if Karadzic and Mladic were not arrested. The International Crisis Group, a well-respected organization monitoring the implementation of Dayton, recommended that the elections be put off because of difficulties in implementing the civilian provisions of Dayton. One of the key failures, in addition to crucial issues like the repatriation of refugees, was the continuing influence of war criminals at large. Karadzic posters were plastered all over Republika Srpska, and Serb nationalist leaders spoke frequently and warmly of him.¹⁹³ When the Organization for Security and Cooperation in Europe (OSCE) stood behind its decision to give a green light to the elections, Bosnians joked that OSCE stood for "Organization to Secure Clinton's Election."

Privately, one senior White House official admitted that leaving Karadzic in Republika Srpska was akin to leaving Göring and Göbbels in Germany after World War II. But when asked publicly about Karadzic and Mladic, White House officials were relentlessly "on message": focus on the September elections in Bosnia, and downplay the fact that Karadzic was at large. On a presidential campaign trip in California, Leon Panetta, the White House chief of staff, was asked under what conditions America would move against Mladic or Karadzic. "We really have to keep the primary mission of our forces there in mind," said Panetta, "which is that they're there to provide security and support for the other IFOR forces, and their mission is not to go out and arrest Karadzic. Now if they confront Karadzic, then they are supposed to take him into custody, so that pretty much remains the mission of our forces." Similarly, Clinton aide George Stephanopoulos said, "We haven't yet succeeded at holding everyone accountable for the war crimes, you're right, but we also can't do anything that would jeopardize the elections right now."

NATO and OSCE officials had argued that arresting Karadzic might create a nationalist backlash right before the elections. But no backlash was needed. In the September 14 voting, nationalists of all three ethnicities triumphed over multiethnicists. Biljana Plavsic, handpicked by a hopeful West to succeed Karadzic, was voted president of Republika

Srpska. Plavsic was a fierce nationalist, and seemed incapable of condemning even the worst Serb atrocities. She had visited Arkan during the height of his Tigers' "ethnic cleansing" and kissed him on the cheek. "I always kiss the heroes," she had explained.¹⁹⁴ In 1994, she had said that Serb-Muslim mixed marriages "lead to an exchange of genes between ethnic groups, and thus to a degeneration of Serb nationhood." Milošević, no stranger to nationalist excess, had once said that Plavsic should be put in a mental institution.¹⁹⁵ Plavsic was not Karadžić, but she had no strong incentive not to keep up Karadžić's politics.

Arbour Takes Over

By the beginning of 1996, a frustrated Goldstone was saying he wanted to be back in South Africa by the summer. In October, he left to take up a seat on South Africa's Constitutional Court, as promised by Mandela. Before going, he handpicked a successor: Louise Arbour, a judge on the Ontario Court of Appeal and a former criminal law professor. Because of the tribunal's rape cases, Goldstone wanted a woman to succeed him. On February 22, Boutros-Ghali had named Arbour as Goldstone's replacement. (With Goldstone's reputation behind Arbour, it was far too late in the day for the Security Council for a rerun of its 1993–94 shenanigans.)

Arbour is a charming, petite person with a Québécois accent. Her good cheer makes her far more approachable than Goldstone; on a whim on a recent vacation, she got a tattoo on one foot and ankle.¹⁹⁶ Arbour made her name with a report criticizing a riot squad in an Ontario jail. Arbour had been a member of a three-judge Ontario Court of Appeal panel that upheld the acquittal of a man accused of helping deport Jews in German-occupied Hungary during World War II—a ruling that made her a startling choice to some Canadian human rights activists. A fine jurist and a thoroughly decent person, Arbour was not yet in Goldstone's league when it came to international politicking.¹⁹⁷ "When you've been a judge for a decade, you're used to speaking in orders that get obeyed," she said, after her first year in The Hague. "So this is a new environment in which to operate. There's lots of frustrations about things that are not happening the way they should. And by 'should,' I mean should morally, logically, by just about any measure—except wrong-headed politics, I suppose."

By the time Goldstone left, many staffers had complaints about the "political animal." "He wants to be the big man, and he leaves us with all this," said one, despairing at Goldstone's earlier indictments. The worst

thing that could happen, tribunal staffers said, was that Milošević would flood them with low-level suspects, overwhelming the tribunal by compliance. When there were rumors that Goldstone might get the Nobel Peace Prize, some members of his own staff grumbled. "You are dealing with not enough money, not enough staff, bureaucrats, big egos, and small minds," said an official in the prosecutor's office. "At least The Hague is quiet when you go home at night." There was appreciation for all Goldstone had done, but the honeymoon was over.

The tribunal had a knack for self-inflicted wounds. NATO countries worried that The Hague would accidentally leak classified information turned over as evidence. There was only one reliable encrypted telephone, in the chief prosecutor's office, which tribunal officials said was maintained by the CIA. A witness in the Tadić trial announced that the Bosnian government had ordered him to perjure himself. In a worrying lapse of security, a Croatian refugee, for some reason carrying a red rose, managed to get past two security points and into the main tribunal itself.¹⁹⁸ Mevludin Oric, one of the tribunal's best witnesses of the Srebrenica massacre, said that he might not testify because the tribunal was not protecting his family from Serb reprisals.¹⁹⁹

Arbour started with next to no knowledge of ex-Yugoslavia or Rwanda. At first, she proved more cautious and conservative than Goldstone, frowning on show-boating "CNN justice." Arbour was less willing than Goldstone to play to the media, which some of her staff (and all of the journalists) thought was a mistake. Goldstone would later privately express considerable irritation with her for not playing to the press and, in the fall of 1998, for not trying hard enough to get into Kosovo.

Unbeknownst to outsiders, Arbour had something big up her sleeve. Soon after taking office, she decided to start making sealed—that is, secret—indictments. These would allow the military the advantage of surprise, although at the expense of the tribunal's usual public denunciation of a suspect. The decision to use sealed indictments impressed NATO. It suggested seriousness.

Arbour had plenty of targets. In Prijedor, as Elizabeth Neuffer of *The Boston Globe* found, the police were still dominated by Hague suspects, charged with atrocities at Omarska, including accused concentration camp commander Zeljko Meakic. Simo Drljaca, who had run much of Prijedor's 1992 "ethnic cleansing" as the police chief then, was now running much of Prijedor.²⁰⁰ Drljaca would be one of the first to be slapped with a sealed indictment.

Still, many American officials, and not just in the Pentagon, were not displeased with the status quo. One senior American diplomat said, "I'm not disappointed at where things are now." It would have been better to have Mladic and Karadzic in the dock, this official said, "[b]ut when this was set up, one knew that that wasn't going to happen, immediately, and the idea was first to have a system of accountability. Whether you got the defendants or not, you have the system of accountability." The tribunal could stigmatize its suspects, and "they will always have to worry that at some point *somebody's* going to grab 'em." There might be a new regime in Republika Srpska, the official speculated, or an Israeli-style commando squad. "They can't travel. What does it profit a man to have accumulated all the wealth that Karadzic has if he has to spend it in Pale? He will never see the sea again in his entire life." But he might not ever see The Hague either—unless something dramatically changed.

ALBRIGHT AND COOK'S MOMENT

"The Mother of All the Tribunals"

The 1996 American elections had almost nothing to do with Bosnia, let alone a tougher war crimes policy. If anything, the imminent election made Clinton doubly eager to avoid losing soldiers. But after Clinton's reelection, he made history by naming the first woman secretary of state: Madeleine Albright, suddenly elevated from UN ambassador.

Goldstone, the State Department liked to recall, had called Albright "the mother of all the tribunals." To Albright, herself twice a refugee from Nazi and Soviet totalitarianism in Czechoslovakia, the wars in Bosnia were horribly reminiscent of Nazism. She was not afraid of using force, nor of browbeating the Pentagon when it was reluctant to do battle. While most American officials had grown up in the shadow of Vietnam, she said, her views of the world had been formed by another searing experience. "My mindset is Munich," she liked to say.²⁰¹

She saw no shortage of Chamberlains in the West's sluggish reaction to war crimes in Bosnia. "The war, itself, is the result of premeditated armed aggression," she said in a harsh speech at the U.S. Holocaust Memorial Museum in April 1994. "Bosnian Serb leaders have sought a 'final solution' of extermination or expulsion to the problem of non-Serb populations under their control." Albright supported military intervention, in the form of lift-and-strike. Since 1993, she had been the loudest Ameri-

can advocate for the tribunal. "We oppose amnesty for the architects of ethnic cleansing," she said in that 1994 speech. "We believe that establishing the truth about what happened in Bosnia is *essential* to—not an *obstacle* to—national reconciliation. And we know the Tribunal is no substitute for other actions to discourage further aggression and encourage peace." The tribunal, Albright said, would deter war criminals now and in the future, help bring reconciliation, and strengthen international law. But she knew the difficulties too. "This is not Nuremberg," she said. "The accused will not be the surrendered leaders of a broken power."²⁰² She emphasized money, investigations, staff, and political will.

Albright, in short, was a true believer, in a tradition going back at least to Lloyd George. But she could not plausibly claim any mandate to rethink America's war crimes policy, neither from the 1996 election nor from any discernible shift in Clinton's thinking on Bosnia. She was acting as equal parts Morgenthau and Stimson—both pressing for punishment per se and for legalism—against the Pentagon and the White House. Unlike Morgenthau, though, her calls for punishment found little public echo. Whatever risks she would take in a firmer policy on war criminals, she would be held personally responsible.

Albright versus Cohen

The stage was set for a confrontation between the Pentagon and the State Department. The Pentagon started by offering what seemed like a compromise. In December 1996, at a NATO summit, Perry, the outgoing American defense secretary, called for the creation of a special police force to arrest war criminals. France and Italy were cool to the plan. The idea, according to Shalikashvili, was to distance NATO forces—which were to shift from being called IFOR to SFOR, for Stabilization Force—from any arrests and thus diminish the chance of retaliation. This police force might not even be under NATO command.²⁰³ The NATO ministers agreed, Perry said, "that bringing these indicted war criminals to justice is an important mission—but is not an SFOR mission."²⁰⁴

Perry's successor was less conciliatory. William Cohen, a Republican, said that American troops would be out of Bosnia in eighteen months and would not hunt down war criminals while there. In March 1997, Cohen warned, "If they choose not to pursue peace, that is going to be their choice." Was peace "something they wish to pursue or do they want to go back to slaughtering each other?"²⁰⁵ Cohen's hands-off approach to

Bosnia would inevitably conflict with Albright's activism, with war crimes issues as a crucial test.

Albright ratcheted up the volume, taking public stands that would make it harder for America to retreat from her pledges without embarrassment. On January 31, 1997, Arbour visited Albright in Washington. Their conversation covered administrative issues, Arbour says, and only in another session in The Hague in May did they focus on the question of arrests. After America threatened to block international loans, Croatia handed over Zlatko Aleksovski, a Croat prison camp leader, but this did not satisfy Albright. He was "not a significant figure," said a tribunal official. On May 15, Albright met with Mate Granic, Croatia's foreign minister, and specifically asked for the surrender of a list of indicted war criminals to The Hague.²⁰⁶

As Albright and Cohen sparred, Clinton remained a cipher. Asked about the proposed special police force, on January 29, he gave a cautious, rambling answer (in which he kept confusing SFOR with UNPROFOR). It would be, Clinton said, "very difficult for them to do the mission." But since Dayton, everyone had known "that they couldn't walk away from this evidence of war crimes and that there needed to be some way of proceeding, but that there was no way that you could effectively do the job of UNPROFOR [*sic*], which was the most important thing to try to stabilize the country and the borders, and, in effect, make that the primary mission."²⁰⁷ On the other hand, Clinton was also quite capable of giving the impression that he was closer to Albright's view. After a meeting with Clinton at the White House on March 26, Izetbegovic declared, "We received clear assurances that the war criminals will be brought to justice." Izetbegovic also said: "I can say only my impression—that would be the special units."²⁰⁸

Clinton ordered Samuel (Sandy) Berger, his national security advisor, to mediate between the two sides. In April and May, Berger conducted a full-blown policy review on Dayton.²⁰⁹ At a White House meeting on May 16, Albright and Cohen reviewed Bosnia policy issue by issue, with Berger trying to find compromises. While Cohen still wanted American troops out of Bosnia by July 1998, he agreed to have the international forces there be more active in the interim—including arresting some war criminals.²¹⁰

Emboldened, Albright started putting her plans for war criminals into practice. The State Department created a new post of ambassador-at-large for war crimes issues, and gave it to David Scheffer, a long-time Albright advisor. Robert Gelbard, the American special envoy to the Bal-

kans, tried unsuccessfully to press Milosevic into surrendering indicted war criminals under Serbia's control.²¹¹

Albright kept ratcheting up the stakes, next with a high-profile tour of Europe. On May 28, she pointedly visited the tribunal, delivering a stem-winder of a speech calling justice "the heart of American policy toward Bosnia."²¹² She went to a Portugal summit of NATO foreign ministers, which issued a call for bolder steps on the issue of war criminals.²¹³ Then she proceeded on a tough, whirlwind tour of ex-Yugoslavia. On May 31, in Zagreb, Albright bluntly asked Tudjman about Dario Kordic's whereabouts and threatened personally to block loans to Croatia from the International Monetary Fund. Winging on to Belgrade later the same day, Albright told Milosevic to turn over Serbia's three indicted JNA officers or risk international isolation. "Words are cheap," she told Milosevic. "Deeds are coin of the realm." Finally, proceeding to Bosnia the next day, she went to Banja Luka, in Republika Srpska, to hector Plavsic about Bosnian Serb intransigence.²¹⁴

Albright's victory was not total. Almost nothing was more controversial than putting soldiers at risk in arresting war criminals. On May 22—several days after Cohen and Albright had ostensibly reached an understanding—Cohen distanced the Pentagon from her more muscular approach to Dayton. Arresting war criminals, Cohen said, "puts them [NATO troops] at great risk. . . . They are not police officers, they are not people who are trained to arrest. Their function is quite different."²¹⁵ A meeting of NATO defense ministers echoed Cohen, freezing an American proposal to arrest some war criminals.²¹⁶

But Albright had the good luck to acquire an unexpected important ally. In May, Tony Blair's Labour Party thrashed Major's Tories in British elections. After years of diffidence or quiet obstructionism from Britain, the tribunal now found itself getting warm support from Robin Cook, Blair's moralistic foreign secretary. "We're just leaving these guys around?" said a baffled Foreign Office diplomat, of the fugitives. At a G-7 summit in Colorado, France and Italy agreed to more planning on how to arrest some war criminals.²¹⁷ Confronting Karadzic's loyalists, Plavsic (the West's rather dubious alternative Bosnian Serb leader) emerged triumphant from a June power struggle in Republika Srpska. Soon after, stories began to appear in the press about American plans to arrest Karadzic, reportedly drawn up by the CIA and the Pentagon's Special Forces but not yet approved by Clinton.²¹⁸

Meanwhile, Arbour was secretly trying to force NATO's hand. "We were working virtually nonstop on the arrest issue," she recalls. Arbour

called the bluff the Pentagon had written into Dayton. Under its own rules of engagement, SFOR was supposed to arrest suspects it routinely encountered. In a country as small as Bosnia, this had to have been happening in many places. The tribunal knew that SFOR troops in Prijedor would encounter Drljaca, the Serb head of Prijedor's police, who had played a key role running the Keraterm and Omarska concentration camps.²¹⁹ Instead of driving Drljaca underground by publicly indicting him, Arbour in March got a sealed indictment. "We gave it to SFOR," says Blewitt, the deputy prosecutor, "and said, well, we know you were encountering this guy, and you can set up the encounter in a way that's not going to cause any loss of life. You're in the driving seat. The guy doesn't know he's indicted." This, Blewitt recalls, caused "an almighty ruckus in NATO and elsewhere. There was a lot of resistance and pressure, trying to get us to back off. Because they were saying that it was just unfair that these people were not given the opportunity to flee—in effect, that was what they were saying. So we didn't back off at all. We just said that we'll go public and expose you for the fraud you are. And a lot of heated words."

Arbour had another card to play. Jacques Klein, the American head of the UN authority in Eastern Slavonia (UNTAES), was a bold and forceful military man. When Arbour told him that Slavko Dokmanovic, the former mayor of Vukovar, was secretly indicted and in Klein's territory, Klein had him arrested without incident and sent him to The Hague on June 27. "And there were no adverse consequences," Arbour says, "and I think it certainly did set a more favorable climate for SFOR to be more proactive." The Hague had finally offered NATO a safer way of making arrests.

Operation Tango

"What we did was not the same as Auschwitz and Dachau, but it was a mistake," said Milan Kovacevic, who had helped run Omarska, in a stunning 1996 interview. "It was planned to have a camp for people, but not a concentration camp. Omarska was planned as a reception centre. . . . But then it turned into something else. I cannot explain the loss of control. I don't think even the historians will find an explanation in the next 50 years. You could call it collective madness."²²⁰ Kovacevic, the director of Prijedor hospital, would not have much longer as a free man to boozily contemplate his sins.

Kovacevic was in his office at the hospital when NATO finally struck. Early in the morning of July 10, British SFOR troops launched two well-

organized arrest raids in Prijedor. Arbour had secretly indicted the two targets, Kovacevic and Drljaca, for complicity in genocide in running Omarska, on March 13. Only SFOR and The Hague knew. The two men were important figures, not like the lowly Tadic.²²¹

Kovacevic, unarmed, surrendered and was whisked to The Hague. Drljaca was fishing in a lake not far from Omarska when SFOR helicopters came after him. Living up to his violent reputation, Drljaca pulled a pistol and fired on the British commandos who had left their helicopters, hitting one of them in the leg. Drljaca was immediately mowed down.²²² This was not altogether unwelcome to NATO. A State Department official coolly pointed out that Drljaca's death proved that SFOR would kill, a fact that would scare other fugitives.

In a sign of Cook's activism, it was British troops who led the raid. America provided logistical support; Clinton had been notified a week before that the raid—called Operation Tango in SFOR parlance—was coming, and had decided it did not pose an undue risk to NATO troops.²²³ Berger explained that SFOR troops had regularly come into contact with Kovacevic and Drljaca in their routine duties, and thus this arrest fell under SFOR's rules of engagement.²²⁴ This was, in its own way, an official confirmation of what human rights activists had long suspected: that SFOR often bumped into indicted war criminals.

The reaction in Republika Srpska was angry. Krajisnik, now the Serb representative on Bosnia's joint presidency, asked Serbs "not to take revenge on the young SFOR soldiers"²²⁵—a statement that sounded more threatening than soothing. Pro-Karadzic radio broadcasts claimed that Drljaca had been murdered, and Plavsic condemned the killing.²²⁶ A State Department official shrugged off the nationalist rhetoric at Drljaca's funeral as "organized top-down backlash."

In the days after the raid, there were three apparently anti-Western bombings. One American soldier was lightly wounded by a man with a sickle;²²⁷ another suffered minor injuries from a bomb.²²⁸ NATO officials, including Clinton, grimly let it be known that reprisals would bring dire consequences.²²⁹

Not every country had changed its stripes like Britain. The Russian Foreign Ministry denounced "cowboy raids,"²³⁰ and Yevgeny Primakov, the Russian foreign minister, warned Cook not to launch any more.²³¹ And as American officials let *The New York Times* know, France had been involved in planning a second raid in the French zone but, fearing casualties, had backed out early in July.²³² This French reticence was particularly

discouraging because Karadzic was presumed to be in and around Pale, in the French zone.

The plan, said a State Department official, was to go after the people SFOR could easily grab: the most undefended and unpopular war crimes suspects. "Low-hanging fruit first," says a British diplomat. Drljaca, famed for his venality and known locally as "Mr. 10%" for skimming his percentage off of all dealing in Prijedor, was a good example. "Everyone just heaved a sigh of relief," says a British official, when this "gangster" was killed.

It was still not clear whether Karadzic and Mladic would be arrested.²³³ Before the raid, there had been a debate among human rights activists and government officials about whether to go after Karadzic first, or to arrest lesser figures before him. "If you're going to kill a snake, why not cut at the head?" asked a senior State Department official, before the raid. "There are people under Karadzic and Mladic who would like to see them fall anyway, like Biljana Plavsic. If you grab some, you might scare them into something desperate, the ones who are sitting in cafés."

Mladic ostentatiously surfaced in plain view: he went to his son's wedding in Belgrade and spent a week enjoying the Montenegrin seaside.²³⁴ Mladic tended to attract less Western attention than Karadzic because he was not meddling in Republika Srpska's politics as vigorously as Karadzic, and because he was presumed to be better guarded. But the net was tightening around Karadzic. On August 9, Holbrooke told Milosevic that Karadzic might be arrested if he did not stay out of Republika Srpska's politics as he had pledged to do.²³⁵ Wesley Clark, the new NATO supreme commander, made the threatening gesture of a visit to Pale.²³⁶ Karadzic was stripped of police protection, and increasingly marginalized as the West threw its influence behind Plavsic.²³⁷ NATO officials kept leaking that Karadzic would soon be in The Hague, one way or another.²³⁸

The raid never came. In a stunning story in *The Washington Post*, France was said to have wrecked a potential raid when one of its officers tipped off Karadzic, who is presumed to be in the French zone. The raid would have involved hundreds of well-armed NATO troops, to overwhelm Karadzic's bodyguards.²³⁹ In *The New York Times*, officials denied that there had been a specific plan to catch Karadzic.²⁴⁰ As of July 1998, plans to arrest Karadzic and Mladic were reportedly scuttled, thanks to fears of NATO casualties and Serb backlash.²⁴¹

Since Operation Tango, the tribunal has been strengthened both by further arrest raids and by continuing support from Cook and Albright.

Karadzic has been marginalized, although moderates—like Milorad Dodik, who served as prime minister—remain in short supply in Republika Srpska. France remains particularly cautious, possibly because of memories of French hostages taken in 1995. American officials complained that France only accepted the surrender of a fugitive when there was no way to avoid it.²⁴² British and American officials blame France for the fact that Karadzic remains at large.

Under firm pressure from Albright and Cook, Tudjman finally made a gesture of compliance with The Hague, in the hopes, say American diplomats in Zagreb, of winning back Croatian control of Eastern Slavonia. After America (to Arbour's chagrin) promised a trial within three to five months for suspects who turned themselves in voluntarily, The Hague found itself swamped by an unprecedented load of ten suspects. On October 6, Dario Kordic and nine other Bosnian Croats went to The Hague of their own accord, or at least of Tudjman's.

There have been several more SFOR arrest raids—all carefully planned to avoid any NATO casualties. "If you're going to do it," says a senior British official, "why take casualties?" France remains the most reluctant. Alain Richard, France's defense minister, has accused The Hague of "show justice" and has said that suspects must be arrested without any bloodshed; Arbour retorted that the French zone was "absolutely safe" for fugitives. On December 18, Dutch SFOR troops arrested two Bosnian Croats for atrocities at Ahmici in 1993. On January 22, 1998, American SFOR soldiers launched the first raid in which they directly participated, briskly arresting Goran Jelusic, who had bragged that he was "the Serb Adolf" in Brcko in 1992. British troops arrested three Omarska suspects in April and May. By March, four Bosnian Serbs had turned themselves in, evidently frightened by SFOR's raids.

As SFOR took The Hague more seriously, it also got frustrated with the tribunal's occasional blunders. SFOR hated the thought of arresting fugitives charged in the unreliable early indictments; there was no point risking NATO soldiers arresting low-level people who might not be convicted. In May, Arbour withdrew fourteen of these indictments, preferring to focus her limited resources on bigger fish. Then there were two deaths in custody, both of which fed Serb nationalist images of The Hague as an anti-Serb kangaroo court. Dokmanovic, soon before his verdict was to be handed down, hanged himself on June 29; Kovacevic died of an aortic aneurysm on August 1. And French SFOR forces killed a Serb suspect in an arrest raid in Foca.

Some fugitives are presumed to have fled Bosnia for Serbia, which still shields war crimes suspects. "Bosnia is no longer so cozy," Arbour says,

with thirty people in custody. "So the natural place to go is Serbia." Mladic reportedly has lived in Belgrade for years.

SFOR's raids have continued, and have even begun to aim higher. On December 2, 1998, American SFOR troops arrested General Radislav Krstic, a senior Bosnian Serb officer accused of a major role in the Srebrenica massacre. This prompted loud Russian and Serb protests. Within Bosnia, arrests still continue, even after the Kosovo war. An accused Keraterm shift commander was nabbed on June 7, 1999, and Radoslav Brdjanin, a senior wartime Karadzic crony, was arrested by British SFOR soldiers at a roadblock on July 6. In August, Momir Talic, the Bosnian Serb military chief of staff, made the mistake of attending a conference in Vienna, unaware that he was under a sealed indictment. He was arrested by plainclothes Austrian police and sent to The Hague—the highest-ranked military suspect in custody. On October 25, SFOR arrested Damir Dosen, accused of atrocities while a shift commander at the Keraterm camp. In a dramatic raid on December 20, British SFOR troops apprehended General Stanislav Galic, who had commanded the Sarajevo-Romanija Corps of the Bosnian Serb Army as it mercilessly shelled Sarajevo's people from 1992 to 1995. It has presumably concentrated Mladic's mind to see so many of his top subordinates—Krstic, Talic, and Galic—all wind up in The Hague. Later the same week, in Foca, SFOR also arrested another war crimes suspect, Zoran Vukovic.

France may have had a change of heart. On January 25, 2000, French SFOR forces made their first successful arrest, of Mitar Vasiljevic, charged with murdering Bosnian civilians while Vasiljevic served in Seselj's paramilitary White Eagles. French troops struck again on April 3 in Pale, blasting open a door to arrest Momcilo Krajisnik, a prominent Karadzic aide who had been speaker of the Bosnian Serb assembly and, later, the Serb representative on Bosnia's three-person presidency after Dayton. Krajisnik, whose histrionics at Dayton and subsequent reluctance to implement the deal struck there had infuriated Western diplomats from Holbrooke on down, became the most important political figure in custody at The Hague. "Force protection is our number one priority," said a senior Clinton administration official the day of the arrest. But White House officials say they have learned that SFOR can do arrest raids that do not threaten NATO's troops in Bosnia.

The tribunal's bitter relationship with Croatia may have taken a sharp turn for the better with the death of Tudjman from cancer in December 1999 and the election of Stipe Mesic as president in February 2000. As Tudjman's medical condition worsened, Croatia had questioned the tri-

bunal's jurisdiction over two Croatian military offensives, known as Operation Flash and Operation Storm. It took furious sparring and American pressure to convince Croatia to turn over indicted war crimes suspect Vinko (Stela) Martinovic, and even more arm-twisting over the fate of Mladen (Tuta) Naletilic, an indicted Bosnian Croat paramilitary leader whom Croatia claimed was too ill to go to The Hague. McDonald, the tribunal's president after Cassese, formally complained in August 1999 to the Security Council about Croatian noncompliance. Blewitt, undiplomatically stating what was perfectly obvious, said that perhaps Tudjman's imminent death might herald better relations between Zagreb and The Hague; for this, Croatia's justice minister demanded his resignation, and luridly called Blewitt's comment "aggressive, morbid and necrophilic."²⁴³

Mesic, who has already testified at The Hague, promises to cooperate with the tribunal, allow Serb refugees to return, and stop Croatia's support for the Bosnian Croats. He has said that there can be no progress in the Balkans without Milosevic in The Hague, and even offered to return to The Hague to testify against him.

The Hague, once so desperate for a defendant in custody that it ballyhooed Tadic's trial, now pushes SFOR to arrest fugitives in the groups in which they were indicted, so that all the Lasva Valley or Foca suspects can be tried together conveniently. The tribunal has so many suspects in custody that its officials have begun to complain that they cannot try them fast enough—a welcome predicament, if seen in the light of the early days in The Hague. But even though Bosnia's future stability is far from assured, the focus of The Hague has shifted to Kosovo.

THE WAR FOR KOSOVO

Indicting Milosevic

In the fall of 1998, Milosevic's repression of ethnic Albanians in Kosovo—the issue that had, in 1987, sparked the wars that destroyed Tito's Yugoslavia²⁴⁴—once again took center stage. Under three specific Security Council resolutions, the Hague tribunal had jurisdiction over Kosovo—a province of Serbia and therefore under the tribunal's mandate to pursue war crimes committed in ex-Yugoslavia since 1991. The Hague was nowhere near ready to do any serious investigations, as senior tribunal officials privately admitted.

In October 1998, Milosevic's justice minister and foreign minister publicly denied the tribunal's jurisdiction. Arbour wrote a letter to Milosevic requesting access to Kosovo for on-site investigations. But much of Arbour's team was denied visas, and Arbour herself only got a seven-day single-entry visa and a warning that she had no right to go to Kosovo, although she could go to Belgrade, where Milosevic's regime had filled her calendar with meetings with Yugoslav officials. "I'm not going to negotiate about jurisdiction," she fumed. "I'm entitled by law."

In November, Holbrooke brokered a last-minute deal to avert air strikes. The deal did not mention The Hague. "The absence of language suggested we had no jurisdiction," Arbour said. But the deal, which even American officials in Belgrade said could not last, did not stick. A massacre of forty Kosovars, in the town of Racak, brought American accusations of "crimes against humanity." Fearful of losing face, NATO convened peace talks in Rambouillet, France. Milosevic refused to attend, evidently afraid that he might be under secret indictment by The Hague. In the talks, the Yugoslav delegation tried to build in amnesty for atrocities in Kosovo.

Arbour kept pressing. In January 1999, she showed up at the Macedonian border demanding entry to Yugoslavia in order to gather evidence in Racak. True to form, Milosevic's regime turned her away.

After the failure of Rambouillet, NATO unleashed its second massive bombing campaign in the Balkans, on March 24. Clinton ruled out ground troops. NATO kept the safety of its pilots ahead of the Kosovars, despite prescient warnings that Serb forces might start a wave of massive "ethnic cleansing." Milosevic's fourth war—after Slovenia, Croatia, and Bosnia—was, as usual, vicious, with paramilitaries leading the atrocities. In total, according to Western estimates, over a million Kosovar Albanians were displaced, and perhaps 10,000 killed, with massacres in places like Velika Krusa and Djakovica.

The Hague came under criticism for moving too slowly. After Britain said that Mladic was involved in this round of savagery, Mladic appeared in Belgrade to deny it. With Britain also accusing Arkan's Tigers of taking a role in the Kosovo atrocities, Arbour announced that Arkan had been under sealed indictment for a year and a half. "She's a bitch," Arkan said.

This time around, Western minds—led by Cook and Albright—had changed about Milosevic.²⁴⁵ Turning against the Milosevic strategy, American and European leaders now began to argue that Milosevic should have been indicted and that it would have been better to have gotten Karadzic on trial so that he could rat out Milosevic.²⁴⁶ As refugees streamed out of Kosovo, NATO officials accused Yugoslavia of genocide and compared

Milosevic not just to Hitler, but also Stalin and Pol Pot. George Robertson, Britain's defense secretary, called Milosevic a "serial ethnic cleanser" and accused him of "genocidal violence." The State Department warned nine Yugoslav military commanders that they might be charged with war crimes. And Clinton pointedly asked, "Think the Germans would have perpetrated the Holocaust on their own without Hitler?"

In stark contrast to Western secretiveness during the Bosnia war, NATO governments now began to share serious intelligence with The Hague, including data from spy satellites over Kosovo. The classified information was packaged and analyzed so that The Hague could use it relatively easily. Cook even appointed a special Kosovo war crimes coordinator, in charge of channeling British intelligence to The Hague.

Arbour warned Milosevic and other top Serb officials that they could face prosecution; the "ethnic cleansing" continued unabated. Temporarily shelving some of its Bosnia investigations, the tribunal sent investigators to Macedonia and Albania to interview Kosovar refugees and issue swift indictments. The OSCE began using a uniform questionnaire for interviews with Kosovar refugees to build a database for The Hague. Arbour flew to France, Britain, Germany, and America to appeal for help, so The Hague could do investigations in "real time." On April 30, Arbour visited Albright in Washington and lobbied for the arrest of war crimes suspects in Bosnia as a way of deterring Yugoslav atrocities in Kosovo.

The impact of this was flattened when Arbour told American officials that she was planning to resign soon. This was no particular surprise; it was an open secret that Arbour had had enough of The Hague and was a likely choice for the next seat on Canada's Supreme Court. But NATO cringed at the thought of opening the tribunal's top job to Russian and Chinese pressures in the Security Council at a time when both countries were fuming at NATO.²⁴⁷ Igor Ivanov, Russia's foreign minister, had even suggested that NATO personnel might be hauled before the tribunal.

Arbour, swarmed by reporters, cut a defiant figure when she made her move on May 27, as the war raged on. Eight years after Dubrovnik and Vukovar, she finally indicted Slobodan Milosevic for crimes against humanity in Kosovo. Mirroring Western priorities, there were no accusations over atrocities in Bosnia or Croatia, although Arbour said that she might make more charges. Arbour also charged Serbia's president Milan Milutinovic, Yugoslav army chief of staff Dragoljub Ojdanic, Yugoslav minister of internal affairs Vojko Stojiljkovic, and Yugoslavia's deputy prime minister. The indictment, based on accounts of several massacres, ends with a chilling list of the names of those presumed killed. Boldly, Arbour said, "[T]he evidence upon which this indictment was confirmed

raises serious questions about their suitability to be the guarantors of any deal, let alone a peace agreement." (This was the opposite position from Goldstone's secret green light to the Americans about meeting Karadzic and Mladic back in 1995.)

But Arbour then undermined the tribunal by jumping ship. Two weeks after indicting Milosevic, Arbour announced her resignation, leaving the repercussions of her single biggest decision to her successor.

America and Britain publicly cheered the indictments, while American officials privately fretted that they would derail cease-fire negotiations. Viktor Chernomyrdin, Russia's envoy on Kosovo, complained that a new obstacle had been put up. How could the great powers negotiate with indicted war criminals? In the event, with a minimum of nose-holding. On June 2, Chernomyrdin and EU envoy Martti Ahtisaari flew to Belgrade to talk directly to Milosevic and Ojdanic. (Talbot worked with Chernomyrdin and Ahtisaari but stayed away from Belgrade.) This was, if anything, a less impromptu decision to do business with indicted war criminals than Holbrooke's meeting with Karadzic and Mladic just before Dayton, although that was invoked as a precedent. "I had no problem with dealing with Milosevic over Kosovo," says a senior American official. Ojdanic and Stojiljkovic were excluded from cease-fire talks with NATO. Milosevic defiantly promoted Ojdanic.

When the NATO-led Kosovo Force (KFOR) entered, unopposed, into Kosovo in June, the soldiers were closely followed by a dozen teams of investigators working for The Hague, totaling some three hundred people. The task was overwhelming. But this time, at least, they worked on relatively fresh graves and recent memories among Kosovars, and there was substantial backup from the FBI and other Western government agencies. Even though the tribunal had only indicted five Yugoslav leaders over Kosovo, NATO forces apprehended over a dozen war crimes suspects, not yet indicted by The Hague. The rage of many Kosovar Albanians against the Serbs is one of the biggest obstacles to a peaceful Kosovo. Russia, demanding a peacekeeping role, stipulated that its troops would not arrest any war criminals. Presumably, many war crimes suspects will head for the haven of Serbia.

NATO would not touch Milosevic. "If he remains in Serbia inside the confines of Serbia," Clinton said, "presumably he's beyond the reach of the extradition powers of the other governments. But sometimes these things take a good while to bear fruit." He added: "I think it's [Milosevic's indictment] a very important thing. But I do not believe that the NATO allies can invade Belgrade to try to deliver the indictment, if you will."²⁴⁸

That leaves the prospect of Milosevic's overthrow from within. Belgrade has been swept with gangland-style executions, with Arkan himself mysteriously gunned down in the lobby of the Hotel Intercontinental on January 15, 2000. But it is not clear if these killings reveal a crumbling regime, or if they are the work of the regime or at least have the regime's blessing. Yugoslavia is unlikely to get foreign aid so long as Milosevic rules. Milo Djukanovic, the democratic president of Montenegro, has promised to comply with The Hague, including arresting Milosevic if he sets foot in Montenegro, Yugoslavia's smaller republic—an extraordinary limitation on Yugoslavia's president. The indictment of Ojdanic makes an army coup unlikely, and Vuk Draskovic, Serbia's main opposition leader, encouraged Milosevic's resignation by saying that he would not turn Milosevic over to The Hague. Still, Arbour says, "the world is a much smaller place for them."

The world is smaller still for Dusan Tadic, who was convicted in May 1997 and sentenced to twenty years in jail. The tribunal in The Hague has grown to be far stronger than its reluctant creators would have imagined back in 1993. With greater NATO support in Bosnia and Kosovo, it could get stronger still. Arbour's successor, Carla Del Ponte, Switzerland's federal prosecutor, has inherited an institution far more robust than what Goldstone had. But with atrocities of such a nightmarish scale, and with a Western commitment that waxes and wanes, the outlook is still uncertain. The tribunal has come a long way from the Tadic trial, but it is still a far cry from the kind of broad accountability that was provided at Nuremberg.

Still, the UN has made two other stabs at creating institutions to punish war criminals. There is The Hague's sister tribunal in Arusha, Tanzania, investigating the genocide in Rwanda in 1994 and subsequent crimes there; and the putative permanent ICC, approved at a UN meeting in Rome in July 1998. After the travails of the war crimes tribunal in The Hague, the ability of the world to create token institutions is not in doubt; but the ability of the world to use such institutions to bring reconciliation to shattered societies is still an open question. "With war criminals walking free—they must pay," says Dragica Levi, in a smoky office in Sarajevo. Levi is a committed Bosnian multiethnicist, herself Jewish but insistent in her tolerance, who stayed in Sarajevo throughout the war to help run La Benevolencija, a philanthropy run by Sarajevo's Jewish community. "If you lost your husband and the killer is walking free, you must have hate in your heart. If you did something you have to pay for it. It is normal."

* *Afterword to the Paperback Edition* *

THE JAILERS took away Slobodan Milosevic's belt and shoelaces. Milosevic's family has a storied history of suicides: his favorite uncle, Mislav Kojensic, shot himself in the head when Milosevic was a boy; some years later, in 1962, while Milosevic was in law school, his father, Svetozar Milosevic, also shot himself, and ten years later, in 1972, his mother, Stanislava Milosevic, hanged herself. Before Slobodan Milosevic's arrest in Belgrade, he had vowed that he would not be taken alive. According to Milosevic's own defense lawyer, the deposed and newly imprisoned leader—stuck in a dismal Belgrade jail facing the bleak prospect of trial for corruption there and likely also a war crimes trial in The Hague—was on tranquilizers and sunk deep in depression.¹ So nobody was taking any chances. The Yugoslav authorities did not want to have to explain a successful Milosevic suicide to the country and the world.

Even after, the Kosovo war, Bill Clinton had publicly announced that NATO was not going to get Milosevic out of Belgrade and into The Hague. Once again, the West was hardly about to risk its troops for the sake of international justice. So it was left to the Serbs to face down their own leadership, or to endure it. This might have smacked of cynicism; but in October 2000, the Serbs surprised the world with a sudden revolution that ousted Milosevic.

International justice got a huge boost from national Yugoslav politics. Skepticism about the tribunal has been replaced, for the moment, with heady optimism. Once Milosevic was out of power, with his political base having seemingly vanished all but overnight, and with increasing American and international pressure for a war crimes trial, there was precious little keeping Serb authorities from surrendering him to The Hague in June 2001—for a trial that represents a high watermark for international justice.

REVOLUTION

Indicting Milosevic

It had been just about the worst possible time for a computer to crash. On Friday, May 21, 1999, in The Hague, Louise Arbour and her staff worked late into the night preparing their indictment of Slobodan Milo-

sevic. She had been painfully criticized for moving slowly on the Kosovo violence in the winter and spring of 1998. (This was, she says, partly due to an opinion from her staff that, because the prosecutor's office did not know if the KLA counted as an organized military force answerable to the Geneva Conventions, the tribunal might not have jurisdiction.) Now, with NATO at war over Kosovo, her indictment was finally almost finished. The work was cut short when a computer failed. Technical glitches aside, the indictment was ready for Arbour's signature on Saturday. She then turned it over to a judge to review the indictment.

Arbour also had to worry about protecting UN personnel. On Monday, May 24, when she appeared before Judge David Hunt, he issued a nondisclosure order that would expire on May 27 at noon. Under this order, the prosecutor could reveal the existence of the indictment to other parties for security reasons. This was an important concern—once again, a reflection of the West's overriding interest in its own citizens. As Arbour stood before the judge, the UN had a secret team of fact finders at work in Kosovo. (When Arbour had first heard of the UN mission, she had been upset, and had gone to Kofi Annan, the UN secretary-general, to complain that by sending a separate mission, the UN was freezing out the tribunal—itsself a UN body. Annan had agreed, but feared that insisting on the inclusion of a Hague investigator would make Yugoslavia refuse to let in the UN mission at all, just as Arbour had been barred from visiting Kosovo after the Racak massacre.² It had been no small struggle to get Yugoslav approval for this mission. So finally, a compromise had been reached: one tribunal investigator would go with the UN team, but, in deference to Yugoslavia, would not be officially identified as such.) So now Arbour, knowing that the UN staffers were vulnerable on the ground, wanted to be sure that news of the indictment would not reach Belgrade until the team was safely out of Yugoslavia by Thursday, their scheduled departure date.

Arbour knew that the UN was probably not the only body that was up to tricks in Kosovo. So she wanted to give some advance warning to others. For three days, Milosevic's indictment was a secret—although one that, Arbour knew, would soon leak out. (By May 25, senior NATO officials had heard rumors that Milosevic was about to be indicted.)³ There was no point in keeping the indictment secret permanently; Milosevic was not going to be snatched by a surprise commando raid like the ones NATO carried out in Bosnia. But Arbour wanted to let some governments know what she had done before Milosevic did. She did not want to jeopardize the security of anyone, if it could be helped.

Arbour personally broke the news to Annan that she had an indictment. She had difficulty establishing a secure communication line with the secretary-general, so finally wound up jumping on a plane to Stockholm to tell him face-to-face, and then returning to The Hague a few hours later. Annan was glad to have advance notice so that he could look after the UN team. His main concern, say tribunal officials, was the negotiations being carried on between Milosevic and EU envoy Martti Ahtisaari and Russian negotiator Viktor Chernomyrdin, which could be wrongfooted by an indictment of Milosevic and his senior staff.

Rather than going one by one to a range of governments to break the news, Arbour used one-stop diplomacy: she told the Dutch foreign minister, and told him he could spread the news to whomever needed to know. The news spread with astonishing speed. By Wednesday evening, it had reached high levels in the American government, as well as NATO commander Wesley Clark.⁴ The Americans were upset. Arbour had never been clear in her own mind if the Americans wanted an indictment or not, but in any case she thought they would have liked to participate in choosing the timing of the indictment. But by passing the chore of breaking the news to the Dutch foreign minister, she also avoided hearing the brunt of NATO's response. Finally, on May 27, Arbour went public with the indictment.

But in the end, NATO's bombs spoke louder than anything else. Milosevic might have been enraged by his indictment, but he finally chose to get a ceasefire. However much the indictment rankled, he was still ex-conced as president of Yugoslavia—what must have seemed a position of perfect immunity.

"He's Finished"

It was a familiar kind of gamble. Confident of its grip on the people, with the opposition in its habitual disarray, a dictatorship would allow a quick election—and discreetly rig the results if they didn't go the right way.

It is also a gamble that almost always blows up in the dictator's face, from Brazil to Pakistan.⁵ When he decided to call an early election, to take place in September 2000, Milosevic surely must not have predicted how badly things would go. He could have waited until the following June, but he saw the main chance now. Ironically enough, he may have been pushed by a brief surge of popularity from the NATO bombing, which he might have wanted to capitalize on to shore up his regime's

legitimacy. Whatever Milosevic might have had in mind, on September 24, Yugoslavs went to the polls to pick a president.

It is no wonder that Milosevic's democratic opponents did not exactly make him tremble. The opposition had managed momentarily to unify itself into something called the Democratic Opposition of Serbia (DOS), a fractious assortment of eighteen opposition groups, fronted by Vojislav Kostunica. Kostunica was an unlikely moderate. He frowned on violence and had never served in any of Milosevic's tainted administrations, but his Serb nationalist credentials were impeccable. A former Belgrade University law professor and opposition parliamentarian, he had struggled against Tito's federalism and turned to Serb nationalism. During the war in Bosnia, Kostunica's sympathies lay with Radovan Karadzic. So Kostunica campaigned against both Milosevic and NATO, bitterly railing against the alliance's bombing campaign. He was no softer on The Hague, denouncing it as a tool of American power and refusing to hear of turning over Milosevic. Kostunica, quiet and reserved, presented himself as high-minded and incorruptible—a welcome respite after the institutionalized gangsterism of the Milosevic era.⁶

The election was, in the end, no contest. Kostunica bested Milosevic by, staggeringly, almost half a million votes. Milosevic's regime, stunned and desperate, worked hard to paper up the extent of the defeat, but the margin was so colossal as to defy electoral fraud. The best Milosevic's loyal election commission could suggest was that Kostunica had done better than Milosevic, but had not cleared the majority threshold, and that there would have to be a second round of balloting. The Constitutional Court, stacked with Milosevic's people, declared the election results canceled and called for a new election sometime before Milosevic's term expired.

This was not the first time Milosevic's back had been against this particular wall. In 1996, he had tried to sweep away the opposition Zajedno coalition's victory in local elections. When Zajedno (Serbo-Croatian for "Together") took to the streets in protest, Milosevic rode it out for three months, letting the opposition factions jockey and bicker among themselves, and finally conceding. But this time, Milosevic's vote fraud set the stage for nothing short of revolution. As opposition crowds began to gather and strikes spread, Serbia seemed on the road either to another Tiananmen Square or another Ceaucescu. The DOS demanded that Milosevic concede to Kostunica.

Protests spread daily. It wasn't just the urban elites who turned on Milosevic. Many of the protestors were from rural areas. Importantly,

coal miners in Kolubara, south of Belgrade, went on strike in protest of Milosevic's attempts to hijack the election. They withstood an appeal by Yugoslav army chief of staff Nebojsa Pavkovic (himself a miner's son, and one of the few top Yugoslav officers in Kosovo not indicted by The Hague), which showed that the army might well leave Milosevic to his fate rather than turn against the demonstrators. Scenting change, even the state media, including Serbian state television and the daily newspaper *Politika*, began to move toward a more independent line in their news coverage—something they had not felt necessary during the years of Milosevic's propaganda barrages against Albanians and Croats and Bosnians.

By October 5, the crowds in Belgrade were enormous, numbering in the hundreds of thousands, cheering and waving flags. Some of the demonstrators went beyond mere protests, storming the grand old Parliament building and facing down riot police. The police fired tear gas outside the Parliament, but then fell back. At their gentlest, student demonstrators chanted, "He's finished!" Others were rougher: "Slobodan, Slobodan, save Serbia and kill yourself!" Fire swept through the Parliament and the state television building. Whatever legitimacy Milosevic might have claimed was gone, and if he was to save his regime, the only way was to shoot at the crowds. But this option never materialized. Many policemen preferred not to do Milosevic's dirty work for him, and the army evidently seemed reluctant. In the event, the Tanjug state news service (which went over to the opposition) reported two deaths and sixty-five injuries. Kicking away Milosevic's last hope of foreign rescue, Igor Ivanov, Russia's foreign minister, flew to Belgrade to meet Milosevic on October 6 and tell him that Russia recognized Kostunica's victory.⁷

As his regime crumbled around him, Milosevic was nowhere to be seen. Finally the speculation about Milosevic's whereabouts ended when, standing in front of a Yugoslav flag, he stiffly made a televised concession to Kostunica on October 6, complete with a lame boilerplate line that could have come from the most ordinary defeated pol: "I myself, relieved by the end of the enormous responsibility that I have borne for a whole decade, plan to rest a little, to spend more time with my family."⁸

Kostunica Talks

With Milosevic turfed out of power, the world quickly shifted its policy toward Yugoslavia—a country that Kostunica proudly declared "liberated." The question, both in Washington and in European capitals,

jerked from what kind of sanctions to impose to what kind of aid to offer. The EU drew up an emergency aid package; the oil embargo vanished; the World Bank opened a Belgrade office and hinted that Yugoslavia could become a member state. But a crucial sticking point was the arrest and trial of Milosevic and other war crimes suspects.

Kostunica dug in his heels. His opposition sprang from two sources. First, he seemed more interested in Serb reconciliation than in revenge against the Milosevic regime. Kostunica, with his ambitions to unite the Serbs, knew that many Serbs had voted for Milosevic and that some of Yugoslavia's most prominent politicians were implicated in Milosevic's deeds, and he might also have worried that the security forces had some residual loyalties to Milosevic.⁹ "An instant trial in The Hague would endanger the very fragile democratic process here," Kostunica warned. During the October revolution, he had called for nonviolence, and taken care to calm hotheads who wanted to march to Dedinc, the posh Belgrade suburb where Milosevic lived.

Second, Kostunica affected a principled skepticism about The Hague. Emphasizing his background as a thoughtful constitutional lawyer who had translated *The Federalist Papers* into Serbo-Croatian, he scorned The Hague. In his first state television interview, on October 5, he did not mince words: "[T]his is a political institution and not a legal institution; actually it is not a court at all. The Hague court is not an international court, it is an American court and it is absolutely controlled by the American government. It is a means of pressure that the American government uses for realizing its influence here. . . . Many people ask about Slobodan Milosevic and my answer was clearly *no*."¹⁰ While not shy about accusing NATO of war crimes in its bombing of Yugoslavia, the furthest Kostunica seemed prepared to go on Serb war crimes was a formula that would hardly satisfy Bosnians or Kosovars: before the September 24 election, Kostunica had told *The New York Times* that he backed a state truth commission that would look at all the crimes of ex-Yugoslavia's wars.¹¹ He also suggested looking at crimes "a few years ago and maybe a few decades ago," evidently implying a look at World War II and the Ustasha period.¹²

While the revolution was still unsteady, and with Kostunica facing possible secessionist challenges in Montenegro and Kosovo, Western capitals toned down discussions of Milosevic's fate. Even Madeleine Albright, usually the most vociferous voice against Milosevic, was prepared to bide her time: "We believe in the importance of accountability for what Milosevic has done," she said, but emphasized that "the important thing is to

get him out of any position of any kind of power." Strobe Talbott, America's deputy secretary of state, said America would not immediately insist on Kostunica turning over Milosevic. And Robin Cook, Britain's foreign secretary, also usually a strong advocate for The Hague, floated the idea of Milosevic first going on trial for corruption in Yugoslavia and then later for war crimes at the UN tribunal.

The Hague also sent somewhat mixed signals. Carla Del Ponte, the chief prosecutor, asked for a meeting with Kostunica after the December parliamentary elections in Serbia, and moved quickly to reopen an office in Belgrade, which had been closed during the Kosovo war. Graham Blewitt, her deputy prosecutor, said that Kostunica should have some time to confront the question of Milosevic's trial, and did not slam the door on a discussion of Yugoslavia launching its own investigations of Milosevic, although he insisted on The Hague's primacy.

Kostunica's own signals were less muddy. Pocketing an aid package at an EU summit in Biarritz on October 14, Kostunica said of The Hague, "The question of cooperation is a fact, but it cannot be one of our priorities." Kostunica found it easier to concentrate on Milosevic's crimes against Serbs, like rampant corruption and electoral fraud, which, for all the horrors of his regime, did not hold a candle to what had happened in Kosovo, let alone Bosnia. One of Kostunica's first moves as president was attending the reburial of a Serb poet in Trebinje, in Republika Srpska—a symbolic gesture of pan-Serb solidarity that terrified Bosnians, although the OHR pressured Kostunica into a quick trip to the Sarajevo airport afterward to meet Bosnian officials. And Kostunica continued to blast The Hague as not really being interested in justice, while praising South Africa's Truth and Reconciliation Commission.¹³

But as it became clear that Kostunica was consolidating his hold on power day by day, the West grew more impatient. On January 4, 2001, Goran Svilanovic, a human rights activist serving as Yugoslavia's new foreign minister, met Albright at the State Department, where she pushed for turning over Milosevic to The Hague. Svilanovic took a softer line than Kostunica, saying that there could be a UN war crimes prosecution of Milosevic but it would have to be held in Yugoslavia. Momcilo Grubac, Yugoslavia's justice minister, urged indicted Yugoslavs to follow Biljana Plavsic, the former Bosnian Serb leader who had turned herself over to The Hague, although Zoran Djindjic, about to become Serbia's prime minister, was horrified that she had been indicted.

Kostunica, zigging as Svilanovic zagged, stunned the West and much of his own DOS by meeting with Milosevic himself on January 13 to discuss

Montenegro and Kosovo. At the same time, Kostunica also unleashed his legal reasoning: admitting that Yugoslavia had signed Dayton and the Geneva Conventions, but still insisting that Yugoslavia's constitution did not allow for extradition of Yugoslav citizens. Kostunica, who had met Milosevic, refused to meet with Del Ponte if she came to Belgrade, but then changed his mind, saying that he wanted to discuss NATO's use of depleted uranium munitions and question whether there was really evidence of a Serb massacre at Racak.

Their meeting went just about as badly as could be expected. Del Ponte, not known for her mildness, brought a list of some of The Hague's secret indictments to ask Kostunica to arrest at least four Serb suspects in Yugoslavia (Kostunica had said that he would publish any such indictments that Del Ponte gave him). In the meeting, Kostunica accused the tribunal of anti-Serb bias, even though Del Ponte had started an investigation into atrocities by Kosovar Albanians against Serbs. After an hour, Del Ponte stormed out of the meeting and refused to talk to reporters.¹⁴ "I absolutely did not like him," she told *La Stampa*. "He just fired off a volley of unjustified accusations."¹⁵

The crucial piece of pressure, in the end, came from the U.S. Congress. Russia's Ivanov said that the tribunal ought to be closed down; the EU did not condition aid tightly on cooperation with The Hague; and George W. Bush, America's new president, had shown scant interest in the Balkans on the campaign trail, and frowned on Clinton's peacekeeping and nation-building efforts. But Congress concentrated the Bush team's minds with a firm deadline of March 31, when the Bush administration would have to certify that Yugoslavia had cooperated sufficiently with The Hague to qualify for a \$100 million financial aid package, as well as for American support for Kostunica's efforts to get World Bank and International Monetary Fund assistance. This was a crucial issue as Kostunica's government, strapped for cash after years of economic sanctions, struggled to restructure its World Bank debt and get low-interest loans.

The cumulative pressure from Washington and The Hague began to take a toll. Kostunica continued to accuse NATO of war crimes and to float the idea of a Belgrade trial for Milosevic, but much of the DOS wanted to turn Milosevic over. The interior minister admitted that Milosevic had been put under police surveillance, and the justice minister said that war crimes suspects would have to go to The Hague eventually. After meeting with Colin Powell, Bush's secretary of state, on February

2, Djindjic announced that Yugoslavia would start criminal proceedings against Milosevic.

Del Ponte suggested on February 20 that Kostunica could demonstrate his seriousness by turning over Bosnian Serb suspects, perhaps starting at Mladic's suburban Belgrade home. NATO and CIA officials thought Karadzic was also sometimes hiding out in Yugoslavia, and even the Yugoslav interior minister admitted that about fifteen indictees were at large in the country. This was no secret. Among them were Milan Milutinovic, Serbia's powerful president during Milosevic's federal Yugoslav presidency; Dragoljub Ojdanic, Milosevic's defense minister; and the so-called "Vukovar three," Yugoslav army officers accused of a 1991 massacre of Croats. But Kostunica made no moves, even keeping the defiant Milutinovic as Serbian president for the time being. In short order, Serbia's interior minister announced that Mladic had vanished.

The possibility of a double standard raised hackles in Croatia. Stipe Mesic, Croatia's president, had come under withering domestic criticism for cooperating fully with The Hague, turning over Bosnian Croat suspects, and starting to hold war crimes trials for Croats accused of atrocities against Serbs. Both for consistency and for Serbia's own democratic progress, Mesic argued, the international community must hold all countries—Yugoslavia included—to the same standards.¹⁶

The noose around Milosevic's neck appreciably tightened when Rade Markovic, the former chief of Milosevic's notorious state security service, was arrested on charges of ordering an assassination attempt on Vuk Draskovic, a Serb opposition leader. The Serbian interior minister announced that Milosevic was being investigated on corruption charges—a huge step, although small beer compared to The Hague's charges of crimes against humanity. In what might have been a conciliatory gesture, Graham Blewitt, the deputy prosecutor, suggested holding some of Milosevic's UN war crimes trial in Belgrade.

Yugoslavia's credibility had been undermined by the inconsistency of the statements coming from Belgrade. But the White House, which would make the crucial choice about whether to certify Yugoslavia as sufficiently cooperative with The Hague, was unsure what to do. Even as the March 31 deadline approached, there were a number of disagreements within the new Bush administration about how to proceed. American officials did not offer Yugoslavia a definitive list of necessary steps, but did say that they wanted Milosevic arrested, if not sent to The Hague, and at least one other war crimes suspect transferred to The Hague. The latter seemed easier to accomplish. On March 12, Blagoje Simic, for-

merly the Serb mayor of the Bosnian town of Samac, became the first Yugoslav citizen to surrender himself to The Hague. A few days later, on March 23, plainclothes Belgrade police arrested Milomir Stakic, a Bosnian Serb accused of running the Omarska and Keraterm concentration camps, and sent him to The Hague—the first such arrest by Serbian authorities, and presumably a last-ditch attempt to show enough Serb cooperation to win White House certification. (Confusingly, Kostunica criticized Stakic's arrest and extradition as illegal.)

According to American officials, James Dobbins, the assistant secretary of state for European affairs, simply wanted to certify Yugoslavia and move on. There were even some divisions within Dobbins's staff. Other American officials, including Pierre-Richard Prosper, named as ambassador-at-large for war crimes issues, argued that the Yugoslavs would have to carry through an arrest of Milosevic. Prosper, although not yet confirmed by the Senate, dug in his heels. Powell was not given a clear unanimous recommendation by the State Department, say American officials. Powell conferred with Bush, but, according to American officials, the decision finally came down to Powell himself over the coming weekend.

The Battle of Uzicka Street

The U.S. Congress had set a March 31 deadline—and at around 2:30 A.M. on March 31, masked Yugoslav special police finally came for Milosevic. The former strongman was inside the villa at 11 Uzicka Street in Dedinje, with his wife, Mirjana Markovic, and their daughter Marija Milosevic, as a gun battle raged outside. Milosevic said that he would not be taken alive. But two arrest attempts failed, with the police forced back by Milosevic's bodyguards. A small crowd chanted their loyalty to Milosevic, facing off against police. Throughout a bewildering night, rumors raced around Belgrade, while the police kept the villa surrounded.¹⁷

Equally baffled in Washington, American officials were not sure that Milosevic would survive the raids. He might be killed while resisting arrest; he might commit suicide rather than go to jail; or he might be intentionally killed by Serbs who wanted to get rid of him once and for all, or who feared what he might tell prosecutors either in Belgrade or The Hague.

The Serbian interior ministry said that Milosevic was under house arrest on charges of corruption and abuse of power, but that Milosevic had refused to accept an arrest order. Djindjic said he had no idea what was going on, and had been watching the movie *Gladiator* (about political

treachery and violence in ancient Rome) on television. Kostunica huddled with his top aides and announced that no one was above the law.

The police appeared ready to try again when, after a protracted siege and lengthy negotiations, Milosevic finally surrendered around 4 A.M. on April 1. He was whisked away in a convoy of five cars, heading for Belgrade's Central Prison. Milosevic had reportedly waved a gun and threatened to kill himself and his wife and daughter; his daughter had also fired a few shots, reportedly at a Djindjic envoy.¹⁸ It could have been much bloodier. The police say they found a staggering arsenal in the compound: two armored personnel carriers, some thirty automatic weapons, two cases of hand grenades, and more.¹⁹ According to the Serbian interior minister, Milosevic had been told that he would not face war crimes charges, which helped convince him to go peacefully. If the government did make those promises, Milosevic was more than a little unwise to rely on them.

Milosevic in The Hague

Milosevic's obsession with The Hague seems only to have grown, as he waited to go there. In an interview with *La Stampa* before his arrest in Belgrade, he wildly called The Hague "an illegal and immoral institution, invented as reprisal for disobedient representatives of a disobedient people—as once there were concentration camps for superfluous peoples and people." He also said, "It's the same form of intimidation that the Nazis used first against the Jews and then against all the Slav people."²⁰ From his Belgrade jail, he issued a statement: "the criminal proceedings against me are a political fix ordered by the new authorities, with the aim of besmirching and belittling my work over many years, and especially the fact that I stood up against the world's power-brokers in the interests of the state and the people."²¹ When he was served with his Hague indictment in his Belgrade cell, Milosevic refused to take it, leaving it at the door.²²

But this was all too late. Even after arresting Milosevic, the Yugoslav government remained under pressure to send him to The Hague. Del Ponte was demanding the "immediate transfer of the accused Milosevic." Bosnia and Croatia, as well as Kosovar Albanian politicians, called for a Hague trial. Bush urged Yugoslavia to send him to face trial for crimes against humanity. Most importantly, Powell had given his certification, but now threatened to skip a June 29 international donors' conference in Brussels if Yugoslavia did not continue its cooperation with The

Hague—an American move that might have scared away other major donors like Japan and the World Bank, scotching any Yugoslav hopes of raising the billion dollars that the country desperately needed.

Once again, Kostunica initially hung tough. "It should never happen," he said, of Milosevic's extradition, while allowing that there ought to be a war crimes trial in Yugoslav courts.²³ The inevitable demonstrations for Milosevic's release were small and mostly made up of middle-aged or old protestors, although public opinion seemed unenthusiastic about a Hague trial.²⁴ Kostunica decided to go through with his mooted truth commission, although two members resigned soon after being named to it.²⁵ When the UN tribunal's registrar came to Belgrade with a warrant for Milosevic, the Serbian justice minister initially refused to take it, instead asking for indictments against Bosnians, Croats, and Kosovars.

But Kostunica's line was eroding fast. As the donors' conference approached, Yugoslav authorities began to discover evidence that Milosevic's security forces tried to dispose of the corpses of Kosovar Albanians, allegedly on personal orders from Milosevic. These revelations, the first time Yugoslav authorities have begun to make a case that Milosevic and his cronies were involved in war crimes, were a way of softening up Serb public opinion before sending Milosevic to the UN tribunal—and making sure Milosevic did not become a martyr. Yugoslavia has also charged almost 200 of its own officers with war crimes in Kosovo, which could also help persuade Serbs of the Milosevic regime's enormities.

In the end, Milosevic's surrender came only after a fiery, high-stakes showdown between Kostunica and Djindjic. When the government could not get a nationalist coalition party to go along with an extradition law in parliament, Djindjic and the rest of the DOS persuaded a reluctant Kostunica to go along with a special decree instead, which would allow the extradition of Milosevic and the other war crimes suspects in Yugoslavia. With timing that could hardly be coincidental, on June 23, just before the donors' conference, the Yugoslav cabinet adopted the decree. This was enough to get America to go to the donors' conference.

In a last-ditch effort, Milosevic's lawyers complained that the decree was illegal. Djindjic and his supporters were startled when they learned that Yugoslavia's Constitutional Court was about to strike down their decree. They called a meeting, but Kostunica failed to show up. This, say Western officials, so angered the rest of the DOS that they decided to put Milosevic on an airplane at once. Scorning the Constitutional Court as a tool of Milosevic, Serbian government authorities pressed ahead with Milosevic's transfer even without a firm legal foundation.

Shipping off this supremely paranoid man seemed to bring out the paranoia in all those involved. At every stage, Serb and Western officials held their breath waiting for something to go wrong. There was no shortage of people who would rather have Milosevic dead than testifying. Djindjic's people, afraid that the army might stop them, used two decoy cars, so three cars went to three different airports without anyone being sure which had Milosevic. They also had an airplane from Montenegro as another distraction.²⁶ But nothing untoward happened. Exactly twelve years after a notorious Kosovo speech that unleashed Serb nationalism, on June 28, 2001, Milosevic was put on a Serbian helicopter to Tuzla.

His first stop—with perfect symbolism—was an American military base in Bosnia, the country that had suffered the most from Milosevic's rule. American officials were considerably relieved when he touched down. Milosevic was then loaded onto a British airplane to The Hague, before a helicopter ride for the final trip to the UN detention unit. Head bowed, he was marched to the compound.

If Milosevic had fancied there would be mass outrage in Serbia, he was largely mistaken. Kostunica, letting Djindjic take the heat, still said that the extradition "could not be considered legal or constitutional." Yugoslavia's prime minister resigned in protest of the extradition, and Russia mildly condemned the move. But the demonstrators in Belgrade, no more than 3,000 strong, were nothing compared to the masses of October. Djindjic may well take heart from the faint public reaction, although Serbs might be angrier to see some of their other leaders follow Milosevic to The Hague. There will still be opportunities for backlash to set in, when Yugoslavia makes good on its pledge to send fifteen more of its indicted citizens to the tribunal, including such prominent figures as Milutinovic, Ojdanic, and Milan Martić.

They are not the only ones sleeping poorly. Mesic's Croatia has stepped up its cooperation with The Hague. NATO has not stopped its arrest raids in Bosnia, even with the younger Bush in the White House. On April 15, just two weeks after Milosevic's arrest, SFOR apprehended Dragan Obrenovic, a lieutenant general in the Bosnian Serb Army, charged with genocide for his role at Srebrenica. Radovan Karadzic, for all his lunatic defiance (he told a Bosnian newspaper that he expected to be nominated for the Nobel prize), may find himself trapped either in a tightening net in Bosnia, or at the mercy of the new authorities in Yugoslavia.²⁷ The same goes for Ratko Mladic, who had cut an ostentatiously high profile around Belgrade before the revolution. As I write this afterword in July 2001, Karadzic and Mladic are still at large—but

their days seem numbered, and in small digits. American officials, saying that the White House is resolved to act, even speak of winding down the hunts for other war crimes suspects if the high-priority ones can be seized. From its feeble beginnings, the tribunal has reached a barely imaginable milestone.

AFTER MILOSEVIC

The fall of Milosevic is not the only story. The cause of international justice has been lurching forward on all fronts. The successes, however limited, of the two UN ad hoc tribunals for ex-Yugoslavia and Rwanda have led to movement toward more tribunals for Cambodia and Sierra Leone. The ICC is gaining some momentum, and will most likely come into being in the near future. And as most dramatically demonstrated in part by the seizure of Augusto Pinochet in London, national courts have taken up the cause of war crimes trials.

Of course, all of these efforts must be judged by what they actually accomplish for the victims. Tokenism is not enough. Milosevic's trial is a landmark, but there have been similar landmarks before—like the Constantinople trials—that came and went. The trial's success, assuming that Milosevic can be convicted, can only be measured in its ability to bring some satisfaction to the victims and rehabilitate the Serb polity.

Nor should the successes of accountability become a palliative, an excuse to push forward with the punishment of war crimes while slackening on the prevention of war crimes. The time to stop Milosevic was 1986, when he put Serbia on the road to war, not 2001. The putative tribunals for Cambodia and Sierra Leone make the point clear: as with Bosnia and Rwanda, these are two places where the international community has little to brag about. But human rights and accountability have become almost an expected part of the Western agenda, which in itself is a considerable accomplishment. There are enough signs of progress that, after so many reversals and failures in modern history, one might be forgiven for temporarily dropping the habitual gloom.

"A Victim of Circumstances"

Politics still lurks behind the advance of human rights. Thus, progress has been the slowest against the strongest states. Against a major power, like Russia or China or America, the bite of unwelcome international

norms is much weaker. The imposition of legalistic norms, not surprisingly, is vastly easier when it is a matter of strong states pushing a human rights agenda on weaker states. The diplomacy of human rights is still power politics, but power politics in the name of justice.

Many of the successes of the Rwanda war crimes tribunal at Arusha have been due to the weakness of many African states, which have not been willing or able to withstand international pressure for extraditions of the scattered genocidal Hutu leadership. As a partial result, the Rwanda tribunal, for all its administrative chaos and friction with the Rwandan government, has been able to prosecute an impressive roster of the major figures in the 1994 genocide. Jean Kambanda, the former Rwandan prime minister, was arrested in Kenya, as was Eliezer Niyitegeka, who had been the minister of information; Jérôme Bicomumpaka, formerly Rwanda's foreign minister, and Théoneste Bagosora, who had been the director of cabinet at the defense ministry, were nabbed in Cameroon; Edouard Karemera, former interior minister, in Togo; Joseph Nzirodera, president of the National Assembly, in Benin; Jean-Paul Akayesu, the mayor of Taba, in Zambia; and Mathieu Ndirumpatse, director-general of the foreign ministry, in Mali. In 1998, the Arusha court convicted Kambanda for genocide and crimes against humanity—an achievement comparable to a Milosevic conviction.

But the picture looks very different when it is a powerful state being bullied, no matter how much the powerful might deserve to wind up in the dock. Russia has come in for withering criticism from human rights groups for its contemptible conduct of the wars in Chechnya. Official Western criticism has been disapproving, although more muted. But Vladimir Putin, waging the second round of the war, has also found that his Chechen campaign—unlike Boris Yeltsin's—can be hugely popular among Russians.²⁸ Putin fiercely defends his war in Chechnya,²⁹ and refused to meet with Mary Robinson, the UN high commissioner for human rights. Although Russia has opened more than eighty cases against its own soldiers, senior Russian officials have made sympathetic comments about Russian soldiers accused of war crimes. Sergei Ivanov, Russia's defense minister, has described Yuri Budanov, a colonel in a tank regiment who confessed to strangling an eighteen-year-old Chechen girl, as "a victim of circumstances."³⁰

China, too, is not so easily bullied on human rights issues, despite its cruel treatment of political dissidents and harsh rule in Tibet.³¹ Soon after taking office, Clinton signed an executive order giving China a year to take serious steps on a variety of human rights issues, including releas-

ing political prisoners and allowing dissidents to leave the country. If China did not, then America would slap it with tough trade penalties—revoking China's most-favored-nation (MFN) trade privileges. Chinese leaders resented the linkage of trade with human rights, and, when John Shattuck, then assistant secretary of state for democracy and human rights, quietly met in Beijing with Wei Jingsheng, a prominent Chinese dissident, the Beijing regime responded by arresting Wei and other dissidents in Beijing and Shanghai. When Warren Christopher, then secretary of state, went to Beijing, Li Peng, China's hardline premier, literally pounded his chair as he railed against American arrogance about human rights. Even though the White House knew that China had not met even the administration's vague conditions for progress on human rights, the Clinton administration publicly backed away from its MFN threat.³² And since the NATO bombing of the Chinese embassy in Belgrade, China is even more resistant to Western humanitarianism.

Still, if one is going to try to push China around on human rights, there is something to be said for trying to enmesh it in the relevant international institutions. Alastair Iain Johnston, a China specialist, has argued that China takes a keen interest in participation in international institutions.³³ Certainly, China has not minded contributing a judge to The Hague, and joined the rest of the Security Council in creating the tribunal and appointing its prosecutors, which tends implicitly to legitimize the idea of international prosecutions of war crimes and human rights violations.

America, in particular, has been slow to allow itself to be judged by the ideals that it trumpets for the rest of the world. Clinton had David Scheffer sign the ICC treaty on America's behalf at the last possible minute, on December 31, 2000; the administration of George W. Bush seems only too happy to let the Senate trash the ICC treaty, for fear that America's global security commitments might expose its soldiers to politicized prosecutions. This is not a hypothetical concern: Milosevic's Yugoslavia launched sham prosecutions of NATO officials for the Kosovo bombing campaign, although Kostunica quickly sidelined them.

The dilemma for human rights groups is that America is more than just another country that ought to be under the ICC's jurisdiction. A powerful liberal state like America is also a crucial engine for tangible progress on human rights.³⁴ American officials point to Milosevic's extradition as proof of how crucial American support would be for the success of the ICC. And NATO is unlikely to be the subject of a serious bona fide war crimes investigation; after all, it took considerable care in the Kosovo

war to choose legitimate military targets, and to hit them accurately. For all that, Americans are not exactly enthusiastic about considering past American war crimes. The My Lai investigation was botched. Robert McNamara has somehow managed to return to polite society, and even to lecture Americans once again about how to conduct foreign policy.³⁵ When John Kerrey, a former U.S. senator and Vietnam veteran who is now president of New School University, was accused of killing Vietnamese civilians in 1969 during a confusing wartime raid, American public debate rarely considered actually investigating Kerrey, let alone his superiors.³⁶ This is hardly the right example, especially for a country whose military deserves praise for teaching its soldiers the laws of war. Somehow, when it comes to our own crimes, suddenly everything is in shades of grey.

Universal Jurisdiction

Rather than set up new international courts to prosecute war criminals, some human rights activists have pushed to use existing national courts to do the job. The easiest way to do this, politically and legally, is when one's own citizens have been the victims—allowing a country's own courts to prosecute the foreigners who victimized its citizens. For example, George H. W. Bush arrested Panamanian strongman Manuel Noriega for drug charges during the 1989 invasion of Panama, and approved an operation to abduct Pablo Escobar Gaviria, the Colombian drug lord running the notorious Medellin cartel.³⁷ More expansively, under the principle of universal jurisdiction, any state can bring to book those responsible for crimes against humanity and war crimes. In some countries, treaties like the Torture Convention or the Geneva Conventions automatically become part of the domestic law; in others, treaty obligations must be specifically ratified or supplemented with domestic implementing legislation. Germany and Belgium have taken the lead in prosecuting, respectively, Serbs and Rwandans.

The politics of universal jurisdiction are inevitably messy. Skeptics—led by Henry Kissinger, who evidently likes to travel hassle-free—worry that sovereignty is being sacrificed, and that some countries will launch politicized prosecutions against enemy officials.³⁸ After all, if every country's courts can reach far and wide, then surely some of them will launch frivolous or malicious prosecutions. As with international trials, only liberal countries will go to pains to have fair procedures, and even then the

prosecutions may get tangled up in the politics of democratization or peacemaking.

But at least so far, the political costs of universal jurisdiction have kept it from spreading too far. Presidents and prime ministers will have much the same hesitations about using legalism for a national war crimes trial as about using legalism for an international war crimes prosecution. Even liberal governments do not relish too much involvement in human rights crusades—which are all too often expensive, legally difficult, and diplomatically painful. It is more common for a war criminal to slip away incognito to another country than it is for that country to catch and prosecute him. Eichmann and Pinochet may yet prove to be the exception, not the rule.³⁹

After all, Idi Amin is resting easy in Saudi Arabia; Milton Obote, another Ugandan, in Zambia; Paraguay's Alfredo Stroessner, in Brazil; and Emmanuel "Toto" Constant, the founder of a notorious Haitian death squad, in Queens, New York.⁴⁰ In 1976, France allowed one of the terrorists allegedly involved in the Munich Olympics massacre to go free, despite Israeli and West German attempts to extradite him. In 1999, Izzat Ibrahim al-Duri, a senior Iraqi official, sought medical help in Austria; despite calls for a trial for Duri's role in the slaughter of Iraq's Kurds, Austria let him go. Later that same year, Mengistu Haile Mariam, the former Ethiopian dictator in exile in Zimbabwe, went to South Africa, also for medical treatment; South Africa snubbed Ethiopian calls for extradition, and let him slip back to Zimbabwe. And in 2000, Senegal indicted Hissène Habré, the brutal former dictator of Chad, for crimes against humanity, but Abdoulaye Wade, Senegal's president, later let it drop.⁴¹ Kissinger need not panic just yet.

More legitimately, many liberals worry that the exercise of universal jurisdiction may interfere with democratization. After all, in a negotiated transition to democracy, the outgoing dictatorship usually secures for itself some kind of amnesty.⁴² If these amnesties are then scotched by foreign judges, then future dictators may cling to power until the bitter end. This is, in a way, the domestic-level equivalent of the dilemma faced by Holbrooke when he decided to negotiate with Milosevic and Karadzic. Some of the most prominent human rights activists believe either that weakened dictators are not in much of a position to insist on amnesty, or that such amnesties are illegitimate and should be overcome.⁴³

At a minimum, universal jurisdiction should be seen as a likely reaction to continued impunity. In other words, the less that one likes universal jurisdiction, the more one ought to like the idea of a well-institutional-

ized international forum where such cases can be heard. (This is a point missed by Kissinger, who has equal reservations about the ICC and universal jurisdiction.)⁴⁴ If one condemns both universal jurisdiction and international war crimes courts, then that leaves the victims with precious few options.

"False Tribunal"

In his first court appearance at The Hague, on July 3, 2001, Milosevic resorted to an old argument. At his arraignment, instead of entering a plea, he coolly denounced the tribunal, in his imperfect English, as a NATO tool: "I consider this tribunal false tribunal and indictments false indictments." He thus joined the long tradition of accused war criminals who consider their own trial nothing more than victors' justice, from Wilhelm II to Göring to Tojo.

Milosevic's variation on the argument is no particular improvement on it. It has been echoed in part by some Serb and Western analysts, from rightists with a dislike for international law to leftists with a dislike for American power.⁴⁵ And it has an echo in the region. Kostunica, playing to the kind of nationalist backlash that undermined Leipzig and Constantinople, did not watch the televised arraignment as it would have been "too painful," but once again blasted The Hague: "There is no impartiality, but only the expression of selective justice."

Of course, Milosevic, of all people, can't complain too much about power politics. It was Western power that got him into the court, but it was Milosevic's own power that had kept him—and his cronies and subordinates—out of it. Nor does Milosevic deserve much sympathy as the object of victors' justice. In a limited way, what goes on in The Hague is victors' justice of a kind, but only inasmuch as all justice relies on a certain measure of force. It is victory that makes justice possible, but the fairness of the process is what makes it justice. Compared to what the Allies planned for Wilhelm II and Talaat, let alone what Morgenthau or Stalin planned for the Nazi leadership, The Hague's kind of victors' justice is pretty mild stuff.

Milosevic, and his half-hearted defenders in Serbia and elsewhere, have pointed to the Hague court as the embodiment of a Western double standard. To be sure, it would be nice to have a tribunal that could pass—and enforce—judgment against all countries, weak or strong. But in a world where impunity is the rule, waiting for perfectly comprehensive

AFTERWORD

justice could mean waiting forever—which is why violent nationalists bother calling for comprehensiveness in the first place.

Comprehensiveness, after all, is no friend to Milosevic. If comprehensiveness means a thorough exploration of war crimes committed by Croats, as well as by Bosnians and Kosovar Albanians, then comprehensiveness is firmly on The Hague's agenda. But it must also mean a thorough accounting for Milosevic's legacy. After all, Milosevic's trial will hardly constitute real justice unless the indictment is changed to include crimes in Bosnia, not just Kosovo. A Bosnia command-responsibility indictment will be far more complicated to make, since the Serb chain of command is murkier than it was Kosovo. Goldstone and Arbour's work on the various chains of command—to Milosevic, as well as to Tudjman and even to Izetbegovic—was relatively rudimentary. But The Hague must finish the job now.⁴⁶ On top of The Hague's work, Milosevic's image is also under attack back in Yugoslavia. There are a number of scenarios being explored that might combine Yugoslav and UN investigations. Milosevic could be returned to Belgrade to face Yugoslav corruption charges during the UN tribunal's lengthy pretrial phase, which could take as long as a year. Selectivity, in short, is Milosevic's best hope.

In a bizarre way, Milosevic is one of the lucky ones. He does not face a Vishinsky or a firing squad. He does not even face a court made up entirely of judges from enemy countries. There were television cameras to cover live his outburst at his arraignment, and he will have plenty of chances to get his message out to the world press.

He is, in short, a beneficiary of legalism, that odd trait of the liberal countries that he scorns. In this curious hybrid court of law, he is free—probably for the last time, if he is convicted—to speak his mind. The irony is not a small one: legalism allows him the opportunity to denounce legalism. But his fate is no longer a matter for diplomats, but for trial lawyers. His words are just words, not commands; and he can be answered in kind by words from the prosecutors and the judges and, above all, some of his victims. Slobodan Milosevic will have to sit in The Hague and listen to witnesses tell how their families were killed.

(316)